(14)

No. 04-1327

Supreme Court, U.S.
FILED
NOV 30 2005
OFFICE OF THE CLERK

In The
Supreme Court of the United States

BOBBY LEE HOLMES,

Petitioner,

v.

THE STATE OF SOUTH CAROLINA,

Respondent.

On Writ Of Certiorari To The Supreme Court Of South Carolina

JOINT APPENDIX
VOLUME I, Pages 1 to 195

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Petition For Certiorari Filed March 31, 2005
Certiorari Granted September 27, 2005

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Apr. 9, 1990 – Indictment for Murder, State of South Carolina

Feb. 24, 1992 – Amended Indictment for Robbery, State of South Carolina; Amended Indictment for Murder, State of South Carolina

Apr. 12, 1993 – Criminal trial of Bobby Lee Holmes, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Apr. 16, 1993 – Jury verdict against Bobby Lee Holmes, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Apr. 19, 1993 – Capital sentence against Bobby Lee Holmes, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Nov. 27, 1995 – Opinion and judgment on direct appeal, Supreme Court of South Carolina

June 10, 1996 – Denial of Petition for Certiorari, U.S. Supreme Court

Jan. 14, 1998 – Order granting post-conviction relief, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Aug. 14-15, 2000 – Pretrial hearing on admissibility of third-party guilt evidence, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Aug. 17, 2000 – Amended Indictment for Robbery, State of South Carolina; Amended Indictment for Criminal Sexual Misconduct, State of South Carolina

Aug. 21, 2000 – Pretrial hearing on admissibility of third-party guilt evidence, South Carolina Court of General Sessions, Sixteenth Judicial Circuit (continued)

Aug. 23, 2000 – Order denying admissibility of third-party guilt evidence, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Mar. 12, 2001 – Criminal trial of Bobby Lee Holmes, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Mar. 17, 2001 – Denial of motion for reconsideration on admissibility of third-party guilt evidence, delivered from the bench, without prejudice, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Mar. 19, 2001 – In camera hearing on use of third-party guilt evidence to impeach the investigation, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Mar. 21, 2001 – Denial of motion for reconsideration on admissibility of third-party guilt evidence, delivered from the bench at the close of State's evidence, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Mar. 23, 2001 – Jury verdict against Bobby Lee Holmes, Sixteenth Judicial Circuit

Mar. 25, 2001 – In camera hearing on use of third-party guilt evidence during sentencing, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Mar. 28, 2001 – Capital sentence against Bobby Lee Holmes, South Carolina Court of General Sessions, Sixteenth Judicial Circuit

Nov. 1, 2004 – Opinion and judgment on direct appeal, affirming the verdict and sentence, Supreme Court of South Carolina

Dec. 1, 2004 – Order denying petition for rehearing, Supreme Court of South Carolina

Mar. 31, 2005 – Petition for Certiorari, U.S. Supreme Court

Sep. 27, 2005 – Order, granting Petition for Certiorari in part, U.S. Supreme Court

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	VOLUME I
THE STATE, PLAINTIFF,	)	TRANSCRIPT OF RECORD
VERSUS	:	90-GS-46-1196
BOBBY LEE HOLMES, DEFENDANT.	)	90-GS-46-1197
	:	90-GS-46-1198
	)	90-GS-46-1200
	:	AUGUST 14, 2000
	)	YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. HAYES III, JUDGE

APPEARANCES:

FOR THE STATE:

THOMAS E. POPE, ESQ., SOLICITOR
KEVIN S. BRACKETT, ESQ., DEPUTY SOLICITOR
WALTER W. THOMPSON, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:

WILLIAM N. NETTLES, ESQ.
JAMES W. MORTON, ESQ.
MARK J. MacDOUGALL, ESQ.
ELIZABETH R. YANG, ESQ.

* * *

[Pretrial Hearing on Admissibility of
Defendant's Third Party Guilt Evidence]

[Defense Witness Frenetta Jamison –
Direct Examination by Mr. MacDougall*]

[88] Q WE'LL TRY TO GET THROUGH THIS AS QUICKLY AS WE CAN. I'D LIKE TO TAKE YOU BACK TO 1989. WHERE DID YOU RESIDE IN 1989, DURING THE MONTH OF DECEMBER?

A I LIVED AT 18 PECAN CIRCLE, CALIFORNIA STREET.

Q DID YOU KNOW AN INDIVIDUAL NAMED MARY STEWART?

A I HAD KNOWN HER, YES, I DID, SIR.

Q AND DID YOU KNOW HER AS A NEIGHBOR?

A YES SIR. SHE . . . YES SIR.

Q AND DO YOU REMEMBER THE PERIOD OF TIME IN WHICH MRS. STEWART WAS ATTACKED?

A AT THE TIME SHE WAS ATTACKED?

Q RIGHT, THE MONTH OF DECEMBER?

A WELL, THE DAY, THAT MORNING I WAS COMING HOME I SAW MR. WHITE.

Q WELL, I'LL TAKE YOU THROUGH THAT AND I'LL ASK YOU SOME SPECIFIC QUESTIONS. SPECIFICALLY, ON DECEMBER 31, 1989, DO YOU RECALL

---

* Any typographical and/or incorrect punctuation found in the following Joint Appendix pages were intentionally left to show accurately how the original documents appeared.

WHERE YOU WERE THAT EVENING AND [89] EARLY MORNING?

A I WAS COMING FROM CLYDE THOMPSON WEST END GRILL.

Q CAN YOU TELL ME WHAT KIND OF PLACE THAT IS?

A IT'S A CLUB, A NIGHTCLUB.

Q AND DO YOU RECALL WHAT TIME YOU LEFT?

A IT WAS BETWEEN ABOUT FOUR-THIRTY, FIVE-THIRTY IN THE MORNING.

Q BETWEEN FOUR-THIRTY AND FIVE-THIRTY?

A YES SIR.

Q AND WHEN YOU LEFT CLYDE'S WHERE DID YOU GO?

A I WENT TO A CONVENIENCE STORE CALLED, AT THE TIME IT WAS, THAT WAS MR. G's. I LEFT THERE AND I WAS COMING BACK UP CALIFORNIA STREET ON MY WAY HOME TO 18 PECAN CIRCLE.

Q WHERE IS MR. G's LOCATED?

A GOING SOUTH ON 321.

Q IS IT ON YOUR WAY FROM CLYDE'S?

A YES, IT IS.

Q AND YOUR RESIDENCE, YOUR HOME AT 18 PECAN CIRCLE, WHERE WAS THAT IN RELATION – HOW FAR AWAY WAS IT FROM MRS. STEWART'S HOME?

A FROM HERE TO THAT BACK DOOR.

Q FROM HERE TO THAT BACK DOOR.

MR. MacDOUGALL: I WOULD ASK THE COURT TO NOTE FOR THE RECORD THAT WE'RE TALKING ABOUT A DISTANCE OF [90] PROBABLY FORTY FEET.

Q IS THAT ABOUT RIGHT, MS. JAMISON?

A YES.

Q WHEN YOU LEFT – IS IT MR. G's?

A YES.

Q WHEN YOU LEFT MR. G's, WHERE'D YOU GO?

A I COME BACK UP THE WAY AND COME BACK UP CALIFORNIA STREET.

Q COMING BACK UP CALIFORNIA STREET, DO YOU PASS –

A THAT'S LIKE COMING FROM CLYDE'S.

Q AND DID YOU PASS MRS. STEWART'S HOME WHEN YOU DID THAT?

A YES, I DID.

Q AND WHAT DID YOU SEE?

A AS I WAS COMING HOME I SAW MR. WHITE GOING UP THE HILL, GOING TO THE APARTMENTS, BUT WHOSE HOUSE HE WENT AT I DO NOT KNOW.

Q WHAT'S MR. WHITE'S FIRST NAME?

A JIMMY, AS I KNOW IT.

Q AND HOW DID YOU KNOW JIMMY WHITE?

A I'VE BEEN KNOWING HIM FOR SOME YEARS.

Q AND YOU RECOGNIZED HIM AS JIMMY WHITE?

A YES, I DID.

Q AND DID YOU SPEAK TO HIM?

A NO, I DID NOT.

[91] Q WAS THERE ANYONE WITH YOU AT THE TIME?

A I WAS WITH MY BOYFRIEND, EX–BOYFRIEND.

Q WHAT'S HIS NAME?

A STANLEY MEEKS.

Q AS YOU PASSED MR. WHITE WHERE WAS HE?

A HE WAS ON THE SIDE OF THE ROAD AS I WAS TURNING IN TO GO TO MY HOME. HE WAS GOING UP THE HILL TO THE APARTMENTS.

Q TO WHICH APARTMENTS?

A AS, LIKE, YOU'RE GOING TO MRS. STEWART'S WHERE SHE LIVED AT. BUT I DON'T KNOW IF HE WENT IN OR NOT.

Q SURE. BUT IN THE DIRECTION OF MRS. STEWART'S APARTMENT?

A YES.

Q ABOUT WHAT TIME DID THIS TAKE PLACE?

A LIKE I SAID, SIR, FROM FOUR-THIRTY TO SOMETHING TO FIVE THAT MORNING.

Q AND YOU AND YOUR BOYFRIEND THEN WENT TO YOUR HOME?

A YES SIR.

Q AND WHEN DID YOU NEXT LEAVE YOUR HOME?

A THE NEXT NIGHT.

Q THE NEXT NIGHT?

A UH-HUH.

Q WHAT WAS MR. WHITE WEARING AT THE TIME?

A I DO NOT KNOW, SIR.

[92] Q DO YOU RECALL ANYTHING ABOUT HIS, WHAT HE WAS WEARING OR HOW HE LOOKED?

A NO SIR.

Q HE WAS JUST WALKING?

A YES SIR.

* * *

[Defense Witness Meshelley Gilmore –
Direct Examination by Mr. MacDougall]

[104] Q I'D LIKE YOU TO GO BACK TO DECEMBER 30 AND 31 OF 1989. DO YOU RECALL THAT NIGHT?

A YES.

Q AND AS THAT EVENING WORE ON, I'M TALKING SPECIFICALLY ABOUT THE TIME GETTING TOWARD MIDNIGHT AND AFTER, WHAT WERE YOU DOING?

A ME AND MY BOYFRIEND HAD HAD AN ARGUMENT.

Q WHERE WERE YOU WHEN YOU HAD THE ARGUMENT?

A AT MY PLACE WHERE I LIVED, 28 PECAN CIRCLE AT THE APARTMENT.

Q AND WHAT WAS YOUR BOYFRIEND'S NAME?

A STEVIE GOOD.

Q WOULD YOU SPELL THAT FOR ME?

A S-T-E-V-I-E.

Q WHAT TIME DID THAT ARGUMENT BEGIN?

A ONE-THIRTY, MAYBE TWELVE-THIRTY, ONE THIRTY.

Q SOMETIME AFTER MIDNIGHT?

A YEAH.

Q AS THE ARGUMENT WORE ON, WHAT HAPPENED?

A HE LEFT THE APARTMENT AND I LEFT TO TRY TO FIND HIM.

Q ABOUT WHAT TIME DID HE LEAVE?

A ABOUT THREE-THIRTY, FOUR O'CLOCK IN THE MORNING.

Q DID HE LEAVE ON FOOT OR WAS HE DRIVING?

A HE LEFT ON FOOT.

[105] Q HOW MUCH TIME PASSED BETWEEN HIS LEAVING THE HOME AND YOU GETTING UP AND FOLLOWING HIM?

A ABOUT TEN OR FIFTEEN MINUTES.

Q WERE YOU BY YOURSELF AT THE TIME?

A YES.

Q WHEN YOU LEFT TO GO LOOK FOR YOUR BOYFRIEND WHERE DID YOU GO?

A I RODE DOWN THROUGH CENTER STREET. I WAS JUST RIDING, JUST LOOKING FOR HIM.

Q WAS THERE ANY PARTICULAR PLACE YOU THOUGHT HE MIGHT BE?

A YEAH, ONE PLACE ON CENTER STREET.

Q AND WHEN YOU CAME OUT, AND WE'LL TALK ABOUT THIS LATER. PECAN CIRCLE IS WHERE IN RELATION TO CALIFORNIA STREET?

A (NO RESPONSE)

Q IF I'M DRIVING ALONG CALIFORNIA STREET AND THE PECAN CIRCLE AREA IS ON MY LEFT?

A YES.

Q HOW DO I GET IN THERE? IS THERE A PARKING LOT OR A COURTYARD?

A THERE'S A PARKING LOT.

Q WHEN YOU LEFT THE APARTMENT DID YOU SEE ANYONE?

A JIMMY WHITE, I SAW HIM OUT IN THE PARKING LOT.

Q AND YOU SAID THIS WAS HOW LATE AT NIGHT?

[106] A ABOUT THREE-THIRTY OR FOUR O'CLOCK.

Q AND HOW DID YOU KNOW JIMMY WHITE?

A I JUST KNOW HIM. I KNOW HIM.

Q HOW LONG HAVE YOU KNOWN HIM?

A AT THE TIME I WAS ONLY SIXTEEN. SO I GUESS I KNOW HIM TWO OR THREE YEARS BEFORE THEN.

Q AND DID YOU TALK TO MR. WHITE AT ALL?

A NO.

Q HOW LONG WERE YOU GONE FROM THE APARTMENT THAT MORNING?

A THIRTY MINUTES, MAYBE FORTY-FIVE MINUTES.

Q SO THAT WOULD TAKE US TO ABOUT WHAT TIME?

A WELL, ABOUT FOUR-THIRTY, FIFTEEN TO FIVE.

Q AND DID YOU RETURN HOME IN THAT CAR AS WELL?

A YES.

Q WERE YOU BY YOURSELF?

A YES.

Q SO, YOU DIDN'T FIND YOUR BOYFRIEND?

A NO.

Q WHEN YOU RETURNED DID YOU SEE ANYBODY THERE AT THAT TIME?

A JIMMY WHITE WAS STILL IN THE PARKING LOT.

Q WHERE WAS HE IN THE PARKING LOT IN RELATION TO YOUR APARTMENT?

A MY CAR WAS PARKED HERE AND THERE WERE MAYBE TWO [107] OR THREE CARS PARKED, AND HE WAS STANDING RIGHT IN FRONT OF THOSE CARS OVER THERE.

Q SO, ABOUT HOW FAR AWAY WERE YOU?

A NOT EVEN THIRTY FEET, MAYBE.

Q DID HE LOOK AT YOU?

A YEAH.

Q AND YOU SAW HIM?

A YES.

Q WHAT DID YOU DO WHEN YOU RETURNED BACK TO THE PARKING LOT AT PECAN CIRCLE AND SAW JIMMY WHITE?

A I SAT IN MY CAR UNTIL HE COULD SORT OF MOVE AWAY ENOUGH FOR ME TO JUST RUN IN THE HOUSE.

Q WHAT WAS HE DOING?

A HE WAS JUST LINGERING AROUND IN THE PARKING LOT.

Q DO YOU RECALL WHAT HE WAS WEARING THAT DAY?

A I DON'T.

Q DO YOU RECALL WHAT HIS HAIR LOOKED LIKE?

A HE HAD LONG HAIR.

Q BUT HOW LONG?

A ABOUT LIKE THAT, PEOPLE CALL IT A SHAG.

Q A SHAG HAIRCUT?

A A SHAG HAIRCUT.

Q WHEN YOU WENT BACK IN YOUR HOME WHAT DID YOU DO?

A WENT TO SLEEP UNTIL I GOT A KNOCK ON THE DOOR.

Q WHAT TIME WAS THAT?

[108] A SEVEN-THIRTY.

Q WHO WAS KNOCKING ON YOUR DOOR?

A A POLICE OFFICER. I'M NOT SURE OF HIS NAME.

Q WHAT DID THE POLICE TELL YOU?

A HE ASKED ME HAD I SAW ANYBODY OUT IN THE PARKING LOT THAT NIGHT. AND I TOLD HIM, YES, I HAD SAW JIMMY WHITE YOU THERE THAT NIGHT.

Q DID YOU SEE ANYBODY ELSE IN THE PARKING LOT THAT NIGHT?

A NO.

Q DID YOU SEE THE DEFENDANT IN THIS CASE, AND LET ME GET OUT OF HIS WAY, BOBBY LEE HOLMES IN THE PARKING LOT THAT NIGHT?

A NO.

* * *

[Joshua Lytle – Cross Examination By Mr. Pope]

[128] Q SO, THAT NIGHT – LET ME ASK YOU THIS, I'VE BEEN LOOKING AT YOUR STATEMENT WHERE YOU HAD ACTUALLY GIVEN A STATEMENT, LIKE, IN APRIL THAT YEAR FOLLOWING. DO YOU KNOW WHAT I MEAN? LIKE, THIS HAPPENED RIGHT AT THE END OF '98. IS THAT RIGHT? I'M SORRY, '89. AND YOU GAVE A STATEMENT IN, LIKE, APRIL OF '90. DO YOU REMEMBER THAT, [129] SIGNING A STATEMENT?

A THE ONLY STATEMENT I GIVE IS WHEN IT HAPPENED.

MR. POPE: YOUR HONOR, CAN I HAVE THE COURT'S EXHIBIT?

Q MR. LYTLE, LET ME SHOW YOU, AND I'LL GET YOU A COPY OF IT. DO YOU SEE THAT, MR. LYTLE? IS THAT YOUR SIGNATURE RIGHT THERE?

A UH-HUH.

Q LET ME SHOW IT TO THE DEFENSE AND I'LL BE RIGHT BACK, OKAY?

A OKAY.

MR. POPE: YOUR HONOR, THIS IS THE ONLY COPY I HAVE WITH ME RIGHT NOW. I'M GOING TO CROSS HIM ON THIS AND THEN I'LL GET A COPY FOR THE COURT.

A MR. LYTLE, THIS SAYS APRIL 7 OF 1990. DO YOU REMEMBER COMING IN AND SIGNING THAT STATEMENT?

A WHEN HE CAME OVER TO THE HOUSE?

Q IS THAT WHAT HAPPENED?

A I DON'T KNOW.

Q YOU'RE WELCOME TO LOOK AT IT. IF IT'LL HELP YOU, I'LL GO THROUGH IT AND YOU TELL ME IF THAT'S WHAT YOU RECALL, AND THEN WE'LL COME BACK AND TALK ABOUT WHEN YOU SIGNED IT. IS THAT OKAY?

A (NO RESPONSE)

Q DO YOU NEED TO LOOK AT IT SOME MORE?

[130] A OKAY, OKAY. THAT'S THE . . .

Q I'M SORRY, SIR?

A IT WAS, I BELIEVE IT WAS ABOUT THREE OF THEM COME AND TALK TO ME ABOUT THIS, ABOUT THAT CASE.

Q NOW, WHEN YOU SAY THREE OF THEM COME AND TALKED TO YOU ARE YOU TALKING ABOUT RECENTLY OR ARE YOU TALKING ABOUT BACK THEN?

A NOT BACK THEN WHEN IT FIRST HAPPENED. MAYBE ABOUT A COUPLE OR THREE MONTHS AGO.

Q THREE MONTHS AGO FROM RIGHT NOW?

A YEAH.

Q SO, A COUPLE OR THREE PEOPLE CAME AND TALKED TO YOU ABOUT THREE MONTHS AGO ABOUT IT?

A YEAH, THE SAME CASE.

Q OKAY. WHO WAS THAT, DO YOU KNOW?

A I CAN'T REMEMBER. I CAN'T REMEMBER THEY NAME.

Q WHO WERE THEY WORKING FOR, DO YOU KNOW?

A NO, I DON'T.

Q BUT THIS IS SOMETHING, THIS IS FROM BOOT SMITH. JAMES SMITH, WE KNOW THAT'S BOOT SMITH, RIGHT?

A UH-HUH.

Q BACK IN APRIL 7 OF '90. LET ME ASK YOU, THIS IS WHEN HE CAME AND HE GOT A WRITTEN STATEMENT FROM YOU. I'LL READ IT THROUGH AND THEN YOU LOOK AT IT AND SEE IF YOU RECALL IT. OKAY?

[131] A OKAY.

Q YOU'VE GOT YOUR BROTHER'S PHONE NUMBER ON HERE. THAT'S WHAT YOU GAVE THEM TO GET IN TOUCH WITH YOU.

A HOW THEY COULD GET IN TOUCH WITH ME.

Q AND HE'S TALKING TO YOU ABOUT SATURDAY, THE 30TH AND THEN SUNDAY, THE 31ST. IS THAT RIGHT? BACK IN '89, THAT'S WHAT Y'ALL WERE TALKING ABOUT?

A OKAY.

Q IT SAYS "ON SATURDAY, 12/30/89 I CAME TO YORK AROUND ABOUT TEN P.M. I WENT TO THE SHACK."

NOW, THE SHACK, IS THAT SOMEWHERE, CAN YOU DRINK A BEER DOWN AT THE SHACK?

A YEAH, THE SECOND TIME I DID.

Q I'M SORRY?

A THE SECOND TIME I WAS THERE.

Q DID YOU HAVE A BEER WHEN YOU WERE THERE AT THE SHACK?

A YEAH, WHEN I WAS THERE THE SECOND TIME.

Q OKAY. SO, YOU'RE DOWN AT THE SHACK. THAT'S DOWN IN SHARON?

A UH-HUH.

Q SO, YOU'RE DOWN AT THE SHACK IN THE EVENING DOWN THERE BEFORE YOU'RE KINDA HEADING ON OUT TO GO TO CLYDE'S AND EVERYTHING, RIGHT?

A YEAH.

[132] Q WAS THERE A BUNCH OF FELLOWS DOWN THERE AT THE SHACK?

A UH-HUH.

Q IS IT A KIND OF A STORE OR IS IT A CLUB? WHAT IS IT?

A IT'S A CLUB.

Q DID YOU SEE JIMMY WHITE DOWN THERE?

A YEAH.

Q SO, HE WAS DOWN AT THE SHACK AND YOU SAW HIM DOWN THERE AT THE SHACK?

A UH-HUH.

Q THE SHACK'S RIGHT UP THE ROAD FROM YOUR HOUSE?

A YEAH, WHEN I WAS STAYING OUT THERE.

Q SO, YOU KNOW JIMMY WHEN HE WAS GROWING UP, WHEN HE WAS EIGHT OR NINE, AND HE WAS A YOUNG BOY AND HE WOULD COME OUT THERE AND STAY WITH MRS. McCAW, RIGHT?

A UH-HUH.

Q SO, HE WAS DOWN THERE AT THE SHACK DOWN THERE AT SOME POINT DRINKING DOWN THERE, TOO?

A YEAH.

Q OKAY. SO, AT SOME POINT YOU DECIDE TO COME ON TO CLYDE'S?

A YEAH.

Q LET'S SEE. YOU HAD ACTUALLY SEEN – AND, AGAIN, I'M JUST TAKING FROM THIS. AND YOU'RE WELCOME ANYTIME TO [133] TAKE A LOOK AT THIS TO JUST TELL ME.

"THE SHACK'S RIGHT UP THE ROAD FROM MY HOUSE. I SEEN JIMMY AT MY HOUSE THAT MORNING." AND THEN YOU SAY YOU SAW HIM THERE AT THE SHACK. EVERYBODY THERE AT THE SHACK DRINKS. I MEAN, JIMMY DRINKS, DON'T HE?

A YEAH.

Q OKAY. AND YOU LEFT THE SHACK AND WENT TO THE RED CARPET, WHICH IS IN YORK. NOW, THE RED CARPET, WHERE IS THAT IN RELATION TO CLYDE'S?

A YOU COME ON UP THERE ON THE BY-PASS AND IT'S UP THERE.

Q IS IT UP FROM CLYDE'S ON 321?

A YEAH, ON 321.

Q OKAY. IS IT ON FURTHER AWAY FROM SHARON?

A OH, YEAH. I'M UP IN YORK.

Q YEAH, THAT'S WHAT I MEAN. BUT I MEAN, WHEN YOU'RE COMING, YOU'RE GET TO CLYDE'S. COMING FROM SHARON, YOU GET TO CLYDE'S BEFORE YOU GET TO THE RED CARPET. THE RED CARPET'S FURTHER, RIGHT?

A YEAH.

Q OKAY. AND SO, EARLIER YOU WERE SAYING, LET'S SEE, THAT YOU LEFT AND YOU WENT TO CLYDE'S AND THEN YOU WENT TO THE RED CARPET.

SO, YOU WENT TO THE SHACK AND YOU HAD SOME BEER AND THEN JUST WENT, WERE GOING OUT FOR THE EVENING. YOU [134] WEREN'T WORKING THAT NIGHT?

A NO, HUH-UH.

Q HERE YOU SAY YOU LEFT THE SHACK AND WENT TO THE RED CARPET IN YORK AND YOU WERE BY YOURSELF AND YOU DROVE YOUR CAR. LATER YOU SAW MICHAEL BURKIN.

NOW, WHO IS MICHAEL BURKIN?

A THAT MY COUSIN.

Q NOW, DO YOU KNOW BOBBY HOLMES?

A I KNOW HIS DADDY.

Q HOW DO YOU KNOW HIS DADDY?

A WE BEEN GROWING UP TOGETHER. I KNEW HIM WHEN HE WAS GROWING UP.

Q OKAY, SO YOU KNOW HIS DADDY. HAVE YOU TALKED TO HIS DADDY ABOUT THIS?

A HUH-UH.

Q THE ONLY FELLOWS AS FAR AS THEM THAT YOU HAVE TALKED TO WAS THOSE GUYS THREE MONTHS AGO, YOU SAID?

A YEAH, I TALKED TO THEM ABOUT THREE MONTHS AGO.

Q ALL RIGHT. SO, YOU SAW MICHAEL AT THE RED CARPET ABOUT TWENTY MINUTES LATER. AND THE RED CARPET CLOSED AT MIDNIGHT ON SATURDAY NIGHT. IS THAT RIGHT?

A YEAH.

Q BUT THEN CLYDE'S STAYS OPEN ABOUT ALL NIGHT, DON'T THEY?

A YEAH.

[135] Q OKAY. SO YOU DRUNK A FEW BEERS. THEN DID YOU GO BACK TO CLYDE'S FROM THE RED CARPET?

A NO.

Q IT SAYS HERE THAT YOU LEFT THE SHACK AND WENT TO THE RED CARPET AND YOU WERE BY YOURSELF. AND THE CARPET CLOSED AT MIDNIGHT, OKAY.

NOW, IS CLYDE THOMPSON'S PLACE, IS THAT CLYDE'S?

A IT'S ANOTHER ONE.

Q IS IT THE SAME THING?

A IT'S PART OF THE SAME THING, THE RED CARPET, THE WEST END GRILL OR SOMETHING LIKE THAT.

Q THE WEST END GRILL IS THE SAME AS THE RED CARPET OR THE WEST END GRILL IS THE SAME AS CLYDE'S?

A NO, THEY NOT THE SAME THING.

MR. MacDOUGALL: YOUR HONOR, WE HAVE A COUPLE OF EXTRA COPIES WE'VE JUST LOCATED, IF IT'LL MAKE IT EASIER.

THE COURT: THANK YOU.

Q WILL THIS HELP YOU OUT, MR. LYTLE? TAKE THIS ONE. DO YOU NEED A SECOND LOOK AT IT OR ARE YOU READY FOR ME TO ASK QUESTIONS?

A I'M READY.

Q YOU WERE SAYING THE WEST END GRILL – I'M NOT SURE I UNDERSTAND. THE WEST END GRILL IS –

A THAT'S THE NAME OF IT. I DON'T KNOW. THEY SAID [136] THAT IT'S THE RED CARPET, BUT I DON'T KNOW. ALL I KNOW IS IT'S THE CARPET.

Q OKAY. NOW, WHAT IS CLYDE THOMPSON'S? IS THAT THE SAME AS CLYDE'S? IS THAT WHAT CLYDE'S IS?

A ALL I KNOW IS CLYDE'S. I DON'T KNOW WHAT THE OTHER NAME IS.

Q DO YOU SEE DOWN THERE AT THE BOTTOM WHEN YOU SAID I DON'T REMEMBER GOING TO CLYDE THOMPSON'S PLACE? ARE YOU TALKING ABOUT CLYDE'S? IS THAT WHAT THAT'S TALKING ABOUT? SEE RIGHT DOWN THERE AT THE BOTTOM.

A WELL, I DIDN'T SAY THAT TO BOOT SMITH. I SAID WHEN I LEFT TOWN I WENT TO THE RED CARPET.

Q OKAY. THAT'S WHAT YOU SAID A MINUTE AGO, RIGHT?

A YEAH.

Q OKAY. AND WHEN YOU TALKED TO THE ATTORNEY A MINUTE AGO YOU SAID YOU WENT TO CLYDE'S, DON'T KNOW HOW LONG YOU STAYED. THEN YOU WENT TO THE RED CARPET AND YOU DON'T KNOW HOW LONG YOU STAYED.

BASICALLY, THE SHACK, CLYDE'S, RED CARPET, HOME, THAT'S HOW IT WENT, RIGHT, FROM WHAT YOU SAID A MINUTE AGO, RIGHT?

A RIGHT.

Q OKAY. NOW, WHAT I'M LOOKING AT HERE AGAIN, NOW, APRIL 7, OF '90 WHEN YOU GAVE THIS STATEMENT TO MR. SMITH, RIGHT?

[137] A RIGHT.

Q IT SAID, IT TALKS ABOUT YOU COMING TO YORK AND YOU'D SEEN JIMMY WHITE AND WENT TO THE SHACK, SAW MICHAEL BURKIN AT THE RED CARPET. THEY CLOSED AT MIDNIGHT. IT SAYS, "I DRANK A FEW BEERS. I CAN'T REMEMBER MUCH ABOUT THAT WEEKEND." IS THAT TRUE?

A YEAH.

Q EXCUSE ME, SIR. I ASKED YOU TWO QUESTIONS. LET ME ASK YOU AGAIN, SIR. YOU TOLD US YOU DRANK A FEW BEERS AT DIFFERENT PLACES, RIGHT?

A YES. I DRUNK A BEER DOWN AT THE SHACK AND I DRUNK ONE OVER TO CLYDE'S.

Q OKAY. AND YOU TOLD HIM, YOU TOLD BOOT SMITH, "I CAN'T REMEMBER MUCH ABOUT THAT WEEKEND." IS THAT RIGHT? YOU SAID, "IT'S BEEN A LONG TIME."

A DID I SAY THAT?

Q YES SIR, IT'S RIGHT HERE.

A OKAY. THE MORNING THAT BOOT SMITH CALLED ME, THEY CALLED ME AND ASKED ME DID I KNOW JIMMY WHITE. I TOLD THEM YEAH. AND THEY SAID, DID JIMMY WHITE AT THE RED ROOF THAT DAY, THAT NIGHT. I TOLD THEM NO.

Q OKAY. AND SOMETIME LATER – AGAIN, I'M JUST LOOKING AT THIS. YOU SAY THAT'S YOUR SIGNATURE THERE. AND THE ONLY DATE I SEE ON IT – OF COURSE, I SEE THE DATE THAT THE CRIME

TOOK PLACE. BUT I SEE 4/7/90. OF COURSE, [138] THAT'S MR. SMITH'S SIGNATURE THERE, I ASSUME. DO YOU RECALL THIS SHEET?

A I WAS UP THERE THAT SAME TIME, THAT SAME MORNING THAT HE CALLED ME UP THERE.

Q WHEN YOU WERE UP THERE THEN DID YOU SIGN SOMETHING?

A YEAH.

Q AND I MEAN, ARE YOU THINKING THAT'S WHAT YOU SIGNED THAT DAY? YOU'VE GOT THE SHEET THERE, TOO. YOU LOOK AT IT. DO YOU THINK THAT'S WHAT YOU SIGNED THAT DAY WHEN YOU TALKED TO BOOT?

A YES SIR, I SIGNED IT WHEN I TALKED TO BOOT.

Q IS THAT THE STATEMENT THAT YOU GAVE THEN?

A YES SIR. THAT SATURDAY MORNING.

Q SO THAT'S WHAT THIS IS. WHEN IT SAYS 4/7/90 YOU'RE SAYING THAT'S WHAT YOU SIGNED THAT DAY FOR BOOT? THE DAY AFTER THE CRIME?

A THAT MORNING, WHEN HE CALLED ME AND TOLD ME TO COME TO THE POLICE STATION.

Q OKAY. AND IN THAT STATEMENT YOU SAID, I CAN'T REMEMBER MUCH ABOUT THAT WEEKEND. OF COURSE, YOU WOULDN'T HAVE SAID THAT ABOUT THAT WEEKEND, BECAUSE IT JUST HAPPENED THE NIGHT BEFORE, RIGHT?

IT HAPPENED THAT SAME NIGHT THAT THEY CALLED ME UP THERE.

Q "THIS STATEMENT IS TRUE AND CORRECT TO THE BEST OF [139] MY KNOWLEDGE." AND THAT'S YOUR SIGNATURE ON IT?

A THAT'S MY SIGNATURE.

Q MR. LYTLE, LET ME ASK YOU THIS, YOU KNOW WHAT THIS CASE IS ABOUT, YOU KNOW WHAT HAPPENED, RIGHT?

A RIGHT.

Q HAS ANYBODY TALKED TO YOU ABOUT THAT, ABOUT WHAT THIS CASE IS ABOUT?

A YEAH. ONE LAWYER COME AND TALKED TO ME ABOUT, I'D SAY ABOUT A COUPLE OF MONTHS AGO ABOUT BOBBY.

Q BOBBY HOLMES?

A BOBBY HOLMES.

Q LET ME ASK YOU THIS, THAT EVENING YOU DIDN'T SEE JIMMY WHITE GO IN MRS. STEWART'S HOUSE, DID YOU?

A NO.

Q BECAUSE ACCORDING TQ ONE PART OF YOUR TESTIMONY YOU DIDN'T SEE JIMMY WHITE AND THE OTHER ONE, YOU SAY YOU SAW HIM UP AT THE SHACK, RIGHT?

A YEAH. BUT I CAN'T REMEMBER.

Q BUT YOU SAY THAT'S YOUR SIGNATURE, RIGHT?

A I SEEN IT. THAT'S MY SIGNATURE.

Q LET ME ASK YOU THIS, BASICALLY AS FAR AS, YOU CAN ONLY TELL WHAT YOU DID. YOU LOADED UP. YOU WENT TO THE SHACK. YOU WENT TO THESE DIFFERENT PLACES AND YOU WENT HOME. IS THAT RIGHT?

A YEAH.

[140] Q AS FAR AS JIMMY WHITE GOING IN MRS. STEWART'S HOUSE OR WHETHER HE DID OR DIDN'T, OR WHETHER BOBBY HOLMES DID OR DIDN'T, YOU JUST REALLY DON'T KNOW, DO YOU, MR. LYTLE? I MEAN, ABOUT THAT, YOU DON'T KNOW ANYTHING ABOUT THAT, DO YOU?

A I DON'T KNOW ANYTHING ABOUT THAT.

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[Defense Witness Annie Boyd –
Direct Examir .tion By Mr. MacDougall]

[163] Q WHAT IS YOUR FULL NAME, MA'AM?

A MY NAME?

Q YES MA'AM.

A ANNIE BOYD.

Q HAVE YOU ALWAYS BEEN KNOWN BY THE NAME, ANNIE BOYD?

A NO SIR. I MARRIED A BOYD.

Q AND I APOLOGIZE FOR ASKING THIS QUESTION, BUT I HAVE TO. HOW OLD ARE YOU, MA'AM?

A EIGHTY-SEVEN.

Q I'M SORRY, EIGHTY-SEVEN?

A EIGHTY-SEVEN.

Q MRS. BOYD, WE'RE HERE ON A HEARING CONCERNING SOME [164] THINGS THAT HAPPENED ON DECEMBER 31, 1989. DO YOU REMEMBER THAT DAY, DECEMBER 31, 1989?

A I REMEMBER SOMEBODY KNOCKING ON MY DOOR.

ON THAT NIGHT, DECEMBER 31, 1989, DID ANYTHING UNUSUAL HAPPEN AT YOUR HOUSE?

A NO.

Q YOU MENTIONED A MOMENT AGO SOMEONE KNOCKING AT THE DOOR.

A I DIDN'T ASK WHO IT WAS. I DIDN'T SAY NOTHING.

Q I'M SORRY?

A I DIDN'T SAY ANYTHING, BUT HE JUST SAY HIS NAME WAS JIMMY. OPEN THE DOOR, MY NAME IS JIMMY. BUT I DON'T KNOW.

Q WOULD YOU REPEAT THAT, PLEASE, MRS. BOYD? WHAT DID THE VOICE SAY?

A AT THE DOOR?

Q YES MA'AM.

A HE JUST SAY HIS NAME JIMMY. HE KNOCKED ON THE DOOR AND HE SAY, OPEN THE DOOR, MY MAN. THIS IS JIMMY. I DIDN'T KNOW WHO IT WAS. I DIDN'T OPEN IT. I JUST HEAR HIM.

Q DID YOU RECOGNIZE THE VOICE?

A NO, I DIDN'T.

Q DID YOU OPEN THE DOOR?

A NO, I DIDN'T.

[165] Q HOW LONG DID THE KNOCKING GO ON?

A HE KNOCKED TWO OR THREE TIMES.

Q AND HOW MANY TIMES DID THE VOICE SAY OPEN THE DOOR, MY MAN, THIS IS JIMMY?

A HE JUST SAY OPEN THE DOOR. HE SAY, MY MAN, THIS IS JIMMY, OPEN THE DOOR.

Q DID HE SAY –

A AND I RECKON HE WANTED TO COME IN BUT HE DIDN'T GET IN.

Q DID HE SAY –

A WHOEVER IT WAS.

Q I'M SORRY. DID HE SAY IT MORE THAN ONCE?

A HE SAID IT TWICE.

Q AND WHAT TIME OF NIGHT WAS THIS?

A I COULDN'T TELL YOU. IT WAS ON INTO THE NIGHT.

Q WAS IT DARK OUT?

A OH, YES, IT WAS DARK. IT WAS REALLY LATE. IT WAS OVER IN THE NIGHT.

Q HAD THE SUN COME UP YET?

A NO, IT WAS DARK IN THE NIGHT.

Q WHERE WERE YOU? I'M SORRY. I APOLOGIZE FOR INTERRUPTING.

A I WAS HOME ON CALIFORNIA STREET.

Q DO YOU REMEMBER THE NUMBER OF YOUR HOME ON CALIFORNIA STREET?

[166] A THE TWENTY-FIRST, I THINK.

Q I'M SORRY?

A I DONE FORGOT THE NUMBER. THE FIRST HOUSE.

Q DID YOU KNOW MARY STEWART?

A YES. I HAD MET HER AFTER THE TIME WE MOVED THERE.

Q AT THE TIME THAT THIS HAPPENED, THE KNOCKING ON THE DOOR THAT CAME WITH THE VOICE, WHERE WAS MARY STEWART LIVING?

A SHE LIVED ON THE OTHER SIDE OF ME, I THINK. I DON'T KNOW IF IT WAS AN APARTMENT OR NOT.

Q NOW, IS IT CORRECT AT THE APARTMENTS ON CALIFORNIA STREET THERE WERE TWO APARTMENTS ON EITHER SIDE OF A WALL THAT RUNS BETWEEN THEM?

A WELL, SEE, ON HER SIDE, SHE GO RIGHT PAST MY APARTMENT TO GO TO HERS.

Q SHE WAS RIGHT PAST YOUR APARTMENT?

A YES, ON THE SAME SIDE AS ME.

Q DID YOU HEAR ANYTHING ELSE THAT NIGHT?

A I DIDN'T HEAR NOTHING AFTER HE LEFT MY HOUSE.

Q AND THE NEXT MORNING, BETWEEN THE TIME YOU HEARD THE VOICE AND THE NEXT MORNING DID YOU SEE ANYTHING ELSE?

A I DIDN'T SEE NOTHING. I DIDN'T SEE. THAT MORNING WHEN I GOT UP THE POLICE WAS OUT THERE AND ASKED ME HAD I HEARD ANYTHING. AND I TOLD THEM SOMEBODY KNOCKED ON THE DOOR BUT I DIDN'T OPEN THE DOOR.

[167] Q DID THE POLICE TALK TO YOU THE NEXT MORNING?

A YES, HE TALKED OUT THERE.

Q DID YOU KNOW THE POLICEMAN?

A YES.

Q AND WHAT DID HE ASK?

A HE JUST ASKED ME DID I HEAR ANYTHING. HE JUST ASKED ME.

Q AND WHAT DID YOU TELL HIM?

A I TOLD HIM – NO SIR, I DIDN'T HEAR NOTHING AFTER HE LEFT MY HOUSE, MY APARTMENT.

Q YOU TOLD HIM AFTER HE LEFT YOUR HOUSE?

A NO, I DIDN'T HEAR ANYTHING.

Q DID YOU TELL HIM ABOUT WHAT YOU HEARD THE NIGHT BEFORE?

A THAT NIGHT BEFORE?

Q YOU TESTIFIED TO THE KNOCKING AND TO THE VOICE THAT SAID, LET ME IN MY MAN, THIS IS JIMMY.

A THAT WAS THE SAME NIGHT.

Q DID YOU TELL THE POLICEMAN ABOUT THAT?

A YES, I TOLD.

Q DID HE ASK ANY QUESTIONS ABOUT THAT?

A HE DIDN'T ASK NO QUESTION. HE ASKED ME DID I OPEN THE DOOR TO MY HOUSE. I TOLD HIM NO. HE DIDN'T ASK ANY OTHER QUESTIONS.

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[Annie Boyd – Cross Examination By Mr. Pope]

[169] Q HE WAS JUST KNOCKING ON THE DOOR AND SAYING, OPEN THE DOOR, MY MAN, THIS IS JIMMY?

A I DON'T KNOW WHO IT WAS.

Q YOU DON'T KNOW WHO IT WAS?

A I NEVER HEARD. I DIDN'T LOOK.

Q YOU DIDN'T LOOK. DID YOU TELL THEM THAT YOU WERE GOING TO CALL THE POLICE?

A NO, I DIDN'T.

Q YOU DIDN'T TALK TO THEM?

A NO.

Q WHAT TIME DO YOU NORMALLY GO TO BED, MRS. BOYD?

A TEN AND ELEVEN O'CLOCK. SOME PEOPLE BE STAYING NEXT TO ME, MS. SHANNON, WE BE SITTING THERE ON THE PORCH AND TALKING IN THE EVENING.

Q IN THE EVENING Y'ALL SIT OUT ON THE PORCH AND TALK?

A YEAH, AND THEN AT NIGHT WE SET THERE. AND THEN THEY COME BACK HOME.

Q WOULD YOU SIT OUT THERE WHEN IT WAS COLD IN THE WINTER TIME?

A NO SIR.

Q DO YOU KNOW HOW IN THE WINTER IT STARTS GETTING DARK EARLY AND A LOT OF PEOPLE GO TO BED A LOT EARLIER? WHAT TIME DO YOU THINK NORMALLY AROUND THE WINTER TIME, AROUND [170] CHRISTMAS TIME, AROUND THAT TIME DID YOU GO TO BED?

A I DON'T KNOW. WHENEVER I GET SLEEPY.

Q IS IT NORMALLY RIGHT AROUND DARK TIME OR IS IT A LOT LATER THAN THAT? DO YOU STAY UP ALL NIGHT HOURS?

A NO.

Q MA'AM, YOU'LL HAVE TO ANSWER WHERE THE JUDGE CAN HEAR YOU.

A NO.

Q SO, YOU JUST KIND OF GO TO BED WHEN YOU GET SLEEPY AND WAKE UP WHEN YOU GET THROUGH SLEEPING?

A YES.

Q OKAY. SO, THIS PARTICULAR NIGHT, SOMETIME IN THE NIGHT HOURS, DO YOU THINK – AND AGAIN, I DON'T WANT TO PUT WORDS IN YOUR MOUTH. DO YOU THINK YOU WENT TO BED AT TEN O'CLOCK THAT NIGHT BEFORE?

A I DON'T KNOW.

Q YOU DON'T KNOW. SO, YOU GO TO BED AND SOMETIME DURING THE DARK, NIGHTTIME YOU REALLY DON'T KNOW WHAT TIME, THERE WAS A KNOCKING AT THE DOOR. IS THAT RIGHT?

A NO. BECAUSE I DIDN'T KNOW BECAUSE I WAS BACK IN THE ROOM IN THE BED

Q IS IT A ONE-BEDROOM APARTMENT?

A IT'S TWO BEDROOMS. A LIVING ROOM AND THE BEDROOM, TWO ROOMS, LIVING ROOM.

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[Defense Witness Nancy Bennett –
Direct Examination By Mr. MacDougall]

[177] Q DID THERE EVER COME A TIME WHEN YOU HAD CONVERSATIONS WITH MR. WHITE AT YOUR RECEPTIONIST'S DESK?

A YES.

Q COULD YOU TELL US GENERALLY WHAT THE TOPIC OF THE DISCUSSION WAS?

A BASICALLY HE, I MADE HIM AN APPOINTMENT WITH THE ATTORNEY, AS WELL AS I CAN REMEMBER. HE BROUGHT UP IN THE CONVERSATION THE BOBBY HOLMES CASE. AND I BELIEVE THAT HE WAS ASKING, YOU KNOW, WHEN IT WAS GOING TO COME UP, OR SOMETHING TO THAT EFFECT.

Q WAS THERE ANYONE ELSE PRESENT WHEN YOU HAD THIS CONVERSATION?

A NO.

Q WHERE DID IT TAKE PLACE?

A IN MY OFFICE AT THE PUBLIC DEFENDER'S OFFICE.

Q HOW MANY TIMES DID YOU HAVE THIS CONVERSATION WITH HIM?

A JUST ONCE.

Q AND I BELIEVE YOU TESTIFIED HE ASKED YOU WHEN THE BOBBY HOLMES CASE WAS COMING UP?

A I THINK THAT'S RIGHT.

Q DID YOU RESPOND TO HIM?

A I PROBABLY TOLD HIM THAT AT THAT POINT I DIDN'T KNOW, YOU KNOW, JUST GENERAL CONVERSATION.

[178] Q WHAT DID HE SAY, FURTHER, IF ANYTHING, REGARDING THE BOBBY HOLMES CASE?

A I REALLY CAN'T REMEMBER EVERYTHING THAT HE SAID. HE MADE THE COMMENT THAT HE DIDN'T THINK THAT BOBBY WAS GUILTY AND THAT HE KNEW MAYBE WHO DID IT. AND THAT EVERYBODY ON THE STREET KNEW. IT WAS JUST BASICALLY THAT TYPE.

Q DID HE TELL YOU WHO HE THOUGHT DID IT?

A NO.

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[Defense Witness Stephen Westbrook –
Direct Examination By Mr. MacDougall]

[183] Q I'D LIKE TO GO BACK TO APRIL – WELL, LET ME ASK YOU A PRELIMINARY QUESTION. BEFORE APRIL OF '92 WERE YOU EVER INCARCERATED AT THE BROAD RIVER FACILITY?

A YES SIR.

Q DO YOU RECALL WHEN YOU WERE THERE?

A DECEMBER '89 TO '90, SEPTEMBER, '90.

Q AND DURING THAT PERIOD OF TIME WHILE YOU WERE AT BROAD RIVER WHICH DORM WERE YOU HOUSED IN?

A MARION.

Q DID YOU DURING THAT PERIOD COME INTO CONTACT WITH [184] AN INDIVIDUAL BY THE NAME OF JIMMY WHITE?

A YES SIR. WE SLEPT IN THE SAME UNIT.

Q I'M SORRY?

A WE SLEPT IN THE SAME UNIT.

Q AND HAD YOU KNOWN MR. WHITE BEFORE HE ARRIVED AT MARION DORM?

A NAH.

Q AND HAD DO RECALL WHAT MR. WHITE WAS INCARCERATED FOR AT THE TIME?

A NAH, I DON'T KNOW WHAT HE WAS INCARCERATED FOR AT THE TIME WHEN HE CAME TO MARION. I DON'T KNOW.

Q DID YOU GET TO KNOW MR. WHITE WHILE HE WAS AT BROAD RIVER?

A YEAH, HE FROM UP MY WAY.

Q DID YOU – WELL, LET ME TALK ABOUT THAT FOR A MINUTE. WHEN YOU SAY FROM UP YOUR WAY, WHERE'S YOUR HOME?

A WE FROM YORK COUNTY. WE RAN TOGETHER, YOU KNOW, IN THE PENITENTIARY.

Q SO, YOU DIDN'T. KNOW HIM. BEFORE YOU MET HIM AT MARION DORM, BUT AFTERWARDS, BECAUSE YOU WERE FROM THE SAME COUNTY AND THE SAME AREA YOU BECAME FRIENDS?

A YEAH.

Q DID THERE COME A TIME WHEN MR. WHITE DISCUSSED WITH YOU THE ASSAULT AND SUBSEQUENT DEATH OF MARY STEWART?

[185] A YES SIR.

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[186] Q AND DID YOU HAVE A DISCUSSION WITH HIM?

A YEAH. I HAD A DISCUSSION WITH HIM.

Q WAS ANYONE ELSE THERE?

A WELL, IT WAS ME AND HIM IN THE ROOM AND THEN JIMMY. THE OTHER INMATE NAMED

JIMMY. WE WAS ROOMMATES AT THE TIME. WHITE – JIMMY LEFT OUT AND THEN ME AND WHITE GOT TO DISCUSS.

Q HOW DID THE MARY STEWART CASE COME UP?

A BECAUSE A FEW INMATES ON THE YARD, WHATEVER, WAS SAYING THAT JIMMY WHITE KNEW MORE ABOUT THE CASE OF MRS. STEWART. AND SO I ASKED HIM WHAT DID HE KNOW ABOUT THE CASE.

Q AND WHAT DID HE TELL YOU?

A WELL, HE TOLD ME HE HAD BROKE INTO SOME OLD LADY HOUSE NAMED – WELL, I DON'T KNOW HER NAME, HER FIRST NAME. HE JUST SAID MRS. STEWART, HE BROKE INTO HER HOUSE AND RAPED HER.

Q DID HE SAY HE HAD DONE ANYTHING ELSE IN MRS. STEWART'S HOUSE?

A HE JUST SAY HE BROKE INTO HER HOUSE.

[187] Q NOW, DID YOU –

A AND RAPED –

Q I'M SORRY.

A AND RAPED HER.

Q NOW, AT THE TIME DID YOU KNOW THE DEFENDANT IN THIS CASE, BOBBY LEE HOLMES?

A I AIN'T KNOW HIM. DID I KNEW HIM?

Q YES, DID YOU KNOW HIM AT THE TIME?

A NAH, NOT PRIOR TO COMMITTING NO CHARGE, NAH. I JUST KNEW WHITE.

Q SO, AT THE TIME THIS CONVERSATION WITH WHITE TOOK PLACE IN 1990, YOU DIDN'T YET KNOW BOBBY LEE HOLMES?

A OH, YEAH, I KNOWED OF HIM. YEAH, I KNOWED OF HIM.

Q HAD YOU MET HIM?

A YEAH.

Q DID YOU KNOW HE HAD BEEN CHARGED WITH A CRIME?

A NO, I AIN'T KNOW THAT.

Q IN THIS CONVERSATION, DID MR. WHITE MENTION, DID JIMMY WHITE MENTION BOBBY LEE HOLMES IN CONNECTION WITH THE ATTACK ON MARY STEWART?

A YEAH, HE MENTIONED IT.

Q WHAT DID HE SAY?

A HE SAY BOBBY DIDN'T COMMIT THE CRIME, HE DID.

Q DID HE SAY WHETHER HE WAS, WHAT HIS CONCERNS WERE? WAS HE WORRIED ABOUT BEING CHARGED HIMSELF?

[188] A YEAH. HE SAID MR. SMITH TOLD HIM TO KEEP QUIET ABOUT THE CASE, HE WANTED TO GET BOBBY HOLMES FOR THE CASE, SOMETHING THAT BOBBY HAD DONE TO HIM. HE WANTED

BOBBY HOLMES HELD ACCOUNTABLE FOR THE CHARGE.

Q WHO IS MR. SMITH?

A HIS NAME BOOT SMITH. I DON'T KNOW. HE SOMEWHERE UP IN HERE, I GUESS.

Q WAS HE A POLICE OFFICER?

A YEAH, YEAH. HE WAS A POLICE OFFICER.

Q MOVING FORWARD IN TIME FROM 1990 YOU MENTIONED THAT YOU HAD BEEN INCARCERATED SINCE 1992?

A SURE HAVE.

Q WHERE WERE YOU HELD IN 1994?

A 1994?

Q YES SIR.

A I WAS AT ALLENDALE.

Q WAS THERE ANY TIME IN 1994 THAT YOU RESIDED AT THE ROCK HILL JAIL?

A '94?

Q YES SIR.

A NAH. I WAS AT THE YORK COUNTY – IN '94 I RESIDED AT YORK COUNTY DETENTION CENTER IN '94, JUNE ON POST CONVICTION.

Q OKAY. DID YOU COME INTO CONTACT WITH JIMMY WHITE WHILE YOU WERE THERE?

[189] A YEAH, HE WAS NEXT DOOR TO ME.

Q AND WHEN YOU SAY NEXT DOOR YOU WERE IN ADJACENT CELLS?

A YEAH, IN THE BACK OF C BLOCK.

Q DID YOU HAVE ANY DISCUSSIONS WITH JIMMY WHITE AT THAT TIME REGARDING MARY STEWART?

A YEAH. I ASKED HIM, I SAY, YO, JIMMY, MY MAN, YOU KNOW THEY FOUND BOBBY GUILTY FOR THAT CHARGE. HE SAY, MAN, I KNOW. MR. SMITH TOLD ME TO KEEP QUIET ABOUT IT. I WAS GONNA COME TO COURT TO TESTIFY THAT I DID THE CRIME, BUT MR. SMITH TOLD ME TO KEEP QUIET ABOUT IT OR I'D BE ON DEATH ROW.

Q OKAY. SUBSEQUENTLY, BEFORE BOBBY LEE'S TRIAL, WERE YOU EVER HOUSED AT KIRKLAND CORRECTIONAL INSTITUTE?

A YES SIR.

Q YOU'VE MENTIONED MR. SMITH. DID HE EVER COME TO SEE YOU WHILE YOU WERE THERE?

A YES SIR.

Q WAS THERE ANYONE WITH HIM?

A YEAH, MS. POTTS.

Q WAS THAT B. J. POTTS?

A YES SIR.

Q WHERE WERE YOU PHYSICALLY IN THE FACILITY WHEN THEY CAME TO SEE YOU?

A I WAS IN POPULATION, BUT I WAS GONNA SEE THEM UP [190] IN OPERATION.

Q THEY CALLED YOU UP TO OPERATIONS TO SEE THEM?

A YES SIR.

Q AND WHEN YOU MET WITH BOOT SMITH AND B. J. POTTS WHAT DID THEY SAY?

A WELL, THEY ASKED ME – THEY WAS READING SOME INFORMATION OUT. AND MS. POTTS AND MR. SMITH ASKED ME. DID I WANT TO GET OUT OF JAIL. RIGHT. I SAY, IT DEPEND ON WHAT I HAVE TO DO. AND SHE SAY, WELL, THE ONLY THING YOU GOT TO DO IS COME TO COURT AND ADMIT THAT YOU, ADMIT, TELL THE JUDGE AND THE JURY THAT BOBBY HOLMES TOLD YOU HE COMMITTED THOSE CRIMES, THAT HE BROKE INTO THAT LADY'S HOUSE AND RAPED HER.

Q WAS ANYONE ELSE PRESENT WHEN YOU HAD THIS CONVERSATION BESIDES YOURSELF, B. J. POTTS AND BOOT SMITH?

A NO SIR. GERALD SMITH CAME DOWN ABOUT FIVE MINUTES AFTER THEY LEFT. HE WAS THERE, BUT HE WASN'T IN THE SAME ROOM WITH US. HE CAME IN AFTER THEY WALKED OUT.

Q OTHER THAN THE TWO CONVERSATIONS YOU'VE TESTIFIED TO WITH JIMMY WHITE IN 1990 AND 1994, DID YOU HAVE ANY OTHER DISCUSSIONS WITH HIM ABOUT THE MARY STEWART KILLING?

A NO SIR.

Q MOVING FORWARD IN TIME, MR. WESTBROOK, TO JUNE 23 OF THIS YEAR. WHERE WERE YOU RESIDING ON JUNE 23?

[191] A I WAS AT KIRKLAND SUPER MAX.

Q OKAY. AND DID ANYTHING HAPPEN THAT DAY?

A YES SIR.

Q WHAT HAPPENED THAT DAY?

A WELL, I WAS – THEY TOLD ME TO PACK UP, I NEEDED – I WAS GOING TO COURT, MY LAWYER NEED TO SEE ME. AND I WAS, LIKE, WHO WANT TO SEE ME. THEY SAY, WELL, YOUR LAWYER. THE MAN, GALLARDO, THE MAN GALLARDO AND PULLIAM TWO LIEUTENANTS WAS SAYING YOUR LAWYER COMING. I SAY, WHO. HE SAY, WELL, MR. PETE SKIDMORE NEED TO SEE YOU. I WAS, LIKE, ALL RIGHT.

THEN WHEN I GOT UP TO ROCK HILL THEY TOLD ME MR. THOMPSON WAS MY ATTORNEY AND CHUCK NEAL AND MR. POPE NEEDED TO SEE ME.

Q OKAY. YOU'VE GOT A LOT OF NAMES IN THERE. LET ME GO THROUGH THAT QUICKLY. PULLIAM AND GALLARDO ARE CORRECTION OFFICERS –

A YEAH.

Q LIEUTENANTS AT KIRKLAND?

A YEAH, OVER THE SUPER MAX UNIT WHERE I WAS AT, WHERE I WAS STAYING AT.

Q AND THEY CAME TO SEE YOU?

A YEAH. NO, THEY WAS IN THE UNIT.

Q IN THE UNIT.

A THEY THE ONE TOLD ME THAT MORNING THAT I WAS COMING [192] TO SEE PETE SKIDMORE.

Q AND PETE SKIDMORE IS THE INVESTIGATOR WORKING ON THE HOLMES CASE AND HE'S SITTING RIGHT OVER THERE. IS THAT RIGHT?

A YEAH, THAT'S THE MAN THEY SAID I WAS COMING TO SEE.

Q OKAY. WHAT OTHER – THEY SAID YOU WERE COMING TO SEE HIM. DID YOU THEN GET DRIVEN TO YORK COUNTY FROM KIRKLAND?

A YES SIR.

Q OKAY.

A BY GALLARDO AND PULLIAM.

Q OKAY. WHEN YOU ARRIVED HERE IN YORK, WHAT HAPPENED?

A THEY CARRIED ME DOWN THE HALLWAY TO THE SOLICITOR'S OFFICE WHERE MR. THOMPSON, CHUCK NEAL AND MR. POPE WAS, AND PULLIAM AND GALLARDO WAS THERE.

Q SO, THE FIVE OF THEM WERE IN THE CONFERENCE ROOM WITH YOU?

A YEAH. POPE CAME IN LAST.

Q WHAT HAPPENED NEXT?

A WELL, CHUCK NEAL TOLD ME – HE WAS, LIKE, – HE OPENED UP HIS FILE. HE HAD TWO LETTERS. HE SAYING ONE OF THE LETTERS WITH MY NAME ON IT, THAT SAY I BEEN KNOWING ABOUT THE HOLMES FOR TEN YEARS. AND YOU CAN CUT ME A DEAL, I CAN WORK WITH YOU. AND THEN ONE GOES ON TO SAY THAT ANOTHER, THAT BOBBY HOLMES SAID, WELL, YOU KNOW, [193] THAT'S HOW YOU DO. IT, MOTHER-FUCKER. YOU DON'T LEAVE NOBODY – EXCUSE ME, YOUR HONOR.

YOU DON'T LEAVE NOBODY STANDING WHEN YOU COMMIT A CRIME. YOU GO ON AND KILL THEM AND MAKE SURE THEY CAN'T BE A WITNESS.

Q AND THESE WERE LETTERS THAT WERE SHOWN TO YOU?

A YEAH, BY THOMPSON AND CHUCK NEAL.

Q WERE ALL FIVE PRESENT AT THE TIME?

A POPE CAME IN.

Q HAD YOU SEEN THESE LETTERS BEFORE THAT DAY?

A NO. THEY WAS SAYING THEY WAS GONNA – THEY WAS SAYING THEY WAS GONNA BRING – THEY WAS SAYING THEY WAS GONNA PRESENT THEM TO THE JUDGE AND MAKE THE JUDGE MAKE IT LOOK LIKE I WROTE THEM 'CAUSE MY NAME ON ONE OF THEM AND MAKE ME LOOK LIKE A RAT.

Q OKAY.

A AND TOLD ME BRING ME ALL THE WAY UP HERE TO MAKE LOOK LIKE A RAT THAT'S MESSED UP.

Q OKAY. WAS YOUR SIGNATURE ON ANY ONE OF THOSE LETTERS?

A NO. MY SIGNATURE AIN'T ON THEM. MY NAME ON THEM AND MY NUMBER. HE WAS SAYING HE COULD GET EXPERT WITNESS TO SAY THAT THOSE LETTERS ARE MINE.

Q BUT DID YOU WRITE EITHER ONE OF THOSE LETTERS?

A NO SIR, I DID NOT.

[194] Q YOU DIDN'T?

A I TOLD HIM THE SAME THING.

Q HAD YOU EVER SEEN EITHER OF THOSE LETTERS BEFORE THAT DAY?

A NO SIR. THEY SHOWED THEM TO ME.

Q WHAT ELSE WAS DISCUSSED THAT DAY, JUNE 23, HERE IN YORK?

A WELL, MR. CHUCK NEAL OVER THERE, HE WAS, LIKE, YOU KNOW GODDAM BOBBY – SORRY, YOUR HONOR.

THE COURT: I'VE HEARD IT BEFORE.

A YOU KNOW GODDAM BOBBY HOLMES SIXTEEN YEARS. HE GOT THIS WATCHDOG ATTORNEY FROM D. C. AND HE GOT MR. SKIDMORE, WHO'S A

HOMOSEXUAL, REPRESENTING HIM. I WAS, LIKE, YO, I AIN'T KNOW THAT.

AND HE SAY, YOU KNOW, DAMN GOOD AND WELL BOBBY HOLMES BROKE INTO EIGHTY-TWO YEAR OLD MRS. STEWART'S HOUSE AND I WANT YOU TO GET UP THERE AND TELL THE JURY THAT BOBBY – I WANT YOU TO GET UP THERE AND TELL THE JURY AND THE JUDGE THAT BOBBY HOLMES TOLD YOU HE BROKE INTO MRS. STEWART'S HOUSE, EIGHTY-TWO YEARS OLD, STOLE, TOOK $40.00 FROM HER AND SODOMIZED HER REPEATEDLY.

Q AND WHAT WAS YOUR RESPONSE TO THAT?

A I WAS, LIKE, YO, MAN, THIS TRIAL, THIS CASE DON'T BENEFIT ME. HE WAS, LIKE, OH. AND HE WAS, LIKE, YOU WANT TO DEAL? AND I WAS, LIKE, NO, I DON'T NO DEAL. [195] HE WAS, LIKE, YOU KNOW, WE AIN'T THE FEDS. WE CAN'T HELP YOU GET OUT. YOU KNOW THAT. YOU AIN'T GOT NO MORE MORALS. YOU DON'T LOST ALL YOUR MORALS, MR. WESTBROOK. YOU GONNA LET A RAPIST WALK THE STREET. AND THEN HE GO OUT THERE AND SOMETHING TO YOUR PEOPLES. COME ON, MAN. YOU DONE LOST ALL YOUR MORALS, YOU NEED TO STAY IN JAIL.

I WAS, LIKE, YOU KNOW, THAT'S WHERE I BE AT, IN JAIL, THEN I'LL STAY IN JAIL.

Q AND WHO WAS IT THAT WAS TALKING TO YOU ABOUT YOUR MORALS?

A MR. NEAL, THE ONE SETTING RIGHT THERE.

Q OKAY. HE'S IN THE COURTROOM HERE TODAY?

A YES SIR.

Q WHAT ELSE WAS DISCUSSED?

A HE WAS, LIKE, WELL, BOBBY HOLMES. THEY GOT SOME UNDERWEAR FROM SOMEONE AND WHEN THEY TOOK THEM FROM THE COUNTY JAIL AT THE DETENTION CENTER THEY DIDN'T BELONG TO BOBBY HOLMES OR HIS PALM PRINT. BUT WE CAN LINK HIM TO IT BECAUSE WE GOT UNDERWEAR FROM SOMEONE ELSE AND WE CAN SAY THAT THEY BOBBY HOLMES IN COURT. AND THE ONLY THING THAT YOU NEED TO DO IS COME IN THE COURTROOM AND SAY THAT BOBBY HOLMES TOLD YOU HE TOOK $40.00 FROM MRS. STEWART AND SODOMIZED HER REPEATEDLY.

Q NOW, HAD YOU HEARD ANY OF THIS BEFORE JUNE 23, THESE [196] FACTS?

A NO, THAT'S WHAT THEY TOLD ME TO SAY.

Q WHAT ELSE WAS DISCUSSED THAT DAY, IF ANYTHING?

A WELL, I DON'T KNOW. POPE CAME IN AND HE WAS, LIKE, YO, YOU NEED TO SEE ME. I WAS, LIKE, MAN, I DON'T NEED TO SEE Y'ALL. I DON'T KNOW YOU. I AIN'T COME TO THIS TRIAL IN THE FIRST TRIAL. THEY SNATCHED ME UP BY THE CHAIN, GET HIM ON OUT OF HERE. I WALKED ON OUT.

Q AND WHAT HAPPENED NEXT?

A WELL, THAT'S JUST ABOUT IT.

Q WELL, WHERE DID YOU GO FROM THERE?

A WELL, I WENT BACK TO KIRKLAND SUPER MAX. AND WELL, AT FIRST, WHEN THOSE TWO, CHUCK NEAL AND THE OTHER CAT RIGHT THERE WALKED OUT, HE WAS, LIKE, PULLIAM AND GALLARDO. SAID NOW, THEY WAS, LIKE, WELL, MR. WESTBROOK, YOU NEED TO GO ON AND COOPERATE WITH THEM. BECAUSE YOU KNOW THEY WORK IN THE UNIT WITH YOU. THEY BEEN LISTENING IN ON YOUR CONVERSATIONS. WHY DO YOU THINK WE THE TWO BROUGHT YOU UP HERE.

AND PETE CAME TO SEE ME. AND HE SAID, WELL, WHAT PETE TELL YOU. I SAID, PETE JUST TOLD ME HE WAS THE PUBLIC DEFENSE. I SAID, THAT'S ALL HE TOLD ME. I SAY, I TALKED TO HIM FOR ABOUT FIVE MINUTES.

BUT THAT'S ALL HE ASKED ME. HE SAID HE WOULD GET BACK WITH ME. AND HE SAY, DID PETE GET BACK WITH YOU? [197] SAY, NAH, HE NEVER CAME BACK. HE SAY, YOU'LL SEE ME LATER ON.

Q OKAY. AFTER YOU RETURNED TO KIRKLAND ON JUNE 23, HOW MUCH LONGER WERE YOU THERE IN SUPER MAX?

A THREE DAYS.

Q WHERE DID YOU GO FROM THERE?

A LEE COUNTY. I JUST GOT TO LEE COUNTY.

Q WHAT'S THE DIFFERENCE BETWEEN LEE COUNTY AND KIRKLAND SUPER MAX?

A WELL, KIRKLAND SUPER MAX IS BASICALLY HOUSING FOR THE MOST DANGEROUS INMATE, YOU KNOW WHAT I'M TALKING ABOUT, IN THE DEPARTMENT OF CORRECTIONS.

Q ARE CONDITIONS DIFFERENT IN LEE?

A YEAH.

Q HOW ARE THEY DIFFERENT?

A WELL, YOU GOT TVs AND RADIOS IN THE CELL AT MAX, SHOWERS IN THE CELLS. AND AT LEE YOU DON'T GOT THOSE THINGS. YOU JUST GET READING MATERIAL.

Q DO YOU HAVE MORE FREEDOM AT LEE TO MOVE AROUND?

A YEAH. BASICALLY THE SAME, YOU KNOW. BASICALLY, THE SAME.

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[Stephen Westbrook – Cross Examination By Mr. Pope]

[203] Q HOW DID YOU GET TO KNOW BOBBY DOWN IN ROCK HILL?

A I KNEW HIM, I KNOWED HIM FROM AROUND.

Q I MEAN, BACK WHEN YOU WERE OUT, BACK WHEN HE WAS OUT?

A HE WASN'T OUT WHEN I WAS OUT. I WAS LOCKED UP.

Q OKAY.

A I WAS LOCKED UP.

Q DID YOU KNOW HIM WHEN YOU WERE LITTLE? DID YOU GROW UP IN ROCK HILL?

A YES SIR.

Q I MEAN, THAT'S WHAT I JUST TRYING TO GET, A FEEL. IT'S NOT A TRICK QUESTION. I'M JUST TRYING TO GET A FEEL OF HOW YOU KNEW HIM. JUST TELL JUDGE HAYES HOW YOU KNEW [204] HIM OR WHEN YOU KNEW HIM.

A I KNOW HIM. I KNOW HIM FROM – I KNOWED HIM. BOBBY ALWAYS BEEN IN YORK, THOUGH. I KNOWED HIM FROM BEING IN ROCK HILL, HE ALWAYS LIVED UP IN THIS AREA SOMEWHERE.

Q WAS IT THAT HIS MAMA LIVED DOWN IN ROCK HILL AND HIS DADDY LIVED UP HERE IN YORK. IS THAT RIGHT?

A I DON'T KNOW NOTHING ABOUT HIS FAMILY LIKE THAT.

Q OKAY.

A I DON'T KNOW HIS DAD AND LIKE THAT.

Q AGAIN, JUST TELL – WHAT I'M TRYING TO GET AT – I'M NOT TRYING TO MAKE IT HARD. JUST TELL THE JUDGE HOW IT WAS THAT YOU KNEW HIM. HOW OLD WERE YOU WHEN YOU KNEW HIM? I MEAN, DID Y'ALL RUN AROUND AND PLAY ON THE PLAYGROUND TOGETHER OR DID YOU SEE HIM OUT AT CLUBS? OR HOW DID YOU KNOW HIM? THAT'S WHAT I'M TRYING TO FIND OUT.

A WHERE YOU WANT TO KNOW – I MET BOBBY, LIKE, – I BEEN KNOWING HIM. I MET HIM AT THE COUNTY.

Q ARE YOU TALKING ABOUT DOWN ON CHERRY ROAD?

A YEAH.

Q WHEN YOU WERE IN AND HE WAS IN?

A YEAH.

Q SO YOU MET HIM THAT WAY?

A YEAH.

* * *

[211] Q AND HE SAID, HE TOLD YOU, I BROKE INTO HER HOUSE AND RAPED HER. IS THAT RIGHT?

A YES SIR.

Q OKAY. LET ME DOUBLE CHECK. OTHER THAN THAT, LIKE YOU SAID, HE SAID BOBBY DIDN'T COMMIT THE CRIME, HE DID?

A YEAH.

Q AND THEN HE SAID THE THING ABOUT BOOT – WHEN YOU SAID MR. SMITH THAT TIME YOU WERE TALKING ABOUT BOOT SMITH, THE POLICE OFFICER, RIGHT?

A YES SIR.

Q BOOT SMITH TOLD HIM TO KEEP QUIET BECAUSE HE, BOOT SMITH, HAD SOMETHING – WAS IT JIMMY McCAW HAD SOMETHING AGAINST BOBBY

HOLMES OR BOOT SMITH HAD SOMETHING AGAINST BOBBY HOLMES?

A I DON'T KNOW. REALLY, I DON'T EVEN KNOW MR. SMITH.

Q YOU'RE TALKING ABOUT THE POLICE OFFICER?

A YEAH, UNTIL HE CAME TO SEE ME. I REALLY DON'T EVEN KNOW HIM LIKE THAT.

Q SO, YOU DON'T –

[212] A AND THEN JIMMY MENTIONED HIS NAME. OTHER THAN THAT, I DIDN'T KNOW HIM PREVIOUSLY.

Q I GOTCHA.

A BEFORE THAT, I DIDN'T KNOW HIM, BEFORE NONE OF THAT.

Q SO, WHAT I GUESS I'M ASKING, JIMMY WAS SAYING THAT BOOT SMITH HAD TOLD HIM TO KEEP QUIET?

A YEAH, ABOUT THE CASE.

Q OKAY. AND DID I UNDERSTAND YOU TO SAY THAT THERE WAS SOME REASON THAT BOOT SMITH WANTED TO FRAME BOBBY HOLMES?

A WELL, I DON'T KNOW. THAT'S WHAT JIMMY SAID.

Q OKAY, OKAY. YEAH, THAT'S WHAT I'M TRYING TO UNDERSTAND ABOUT IT.

A THAT'S WHAT JIMMY WHITE SAID.

Q OKAY. TOLD HIM TO KEEP QUIET, OKAY. THEN AT THE '94 YOU WERE DOWN AT THE DETENTION CENTER. IS THAT WHEN IT WAS OVER HERE THEN? WAS THAT HERE AT THE MOSS JUSTICE CENTER OR WAS IT STILL DOWN ON CHERRY ROAD?

A WE WAS ON CHERRY ROAD AT THE OLD DETENTION CENTER.

Q AND YOU ASKED HIM ABOUT IT THEN, YOU SAID ABOUT JUNE OF '94?

A YEAH. I'M SURE IT WAS JUNE BECAUSE I WAS UP THERE ON POST CONVICTION.

Q WHEN YOU HAD YOUR PCR HEARING?

A YEAH.

[213] Q AND –

A JIMMY WAS BACK FOR A PAROLE VIOLATION OR SOMETHING. I DON'T – I THINK IT WAS A PAROLE VIOLATION, PROBATION VIOLATION.

Q OKAY. AND HE SAID THEN THAT HE WAS GOING TO COME TO COURT AND ADMIT WHAT HE DID?

A YEAH. BOOT SMITH AND YOU TOLD HIM TO KEEP QUIET, OR HE GONNA GET CHARGED AND PUT ON DEATH ROW.

Q OKAY. SO, IN '94, BOOT SMITH TOLD HIM TO KEEP QUIET AND –

A YEAH, AND YOU.

Q – NOW HE'S SAYING I TOLD HIM TO KEEP QUIET?

A YOU AND SMITH, YEAH. YOU AND SMITH.

Q OKAY.

THE COURT: IF YOU CAN'T CONTROL YOURSELVES, YOU'LL HAVE TO LEAVE OR ELSE I'M GOING TO HAVE TO PUT YOU IN JAIL.

GO AHEAD.

Q SO, I TOLD HIM THAT BOOT SMITH TOLD HIM TO KEEP QUIET OR – WHAT DID I TELL HIM?

A HE GONNA GET – YOU GONNA CHARGE HIM WITH THE DEATH PENALTY.

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[238] Q AND BOBBY AND YOU GREW UP TOGETHER?

A WE DIDN'T GROW UP TOGETHER.

Q SO, THIS ISN'T TRUE, EITHER?

A I KNOW HIM.

Q I'M JUST ASKING YOU WHAT – YOU SIGNED THIS. IT SAYS BOBBY GREW UP TOGETHER. AND THAT AIN'T TRUE?

A I KNOW HIM, YEAH, I KNOW HIM REAL GOOD.

Q WAS HE BETTER FRIENDS WITH YOU OR WITH YOUR BROTHER?

A BOBBY JUST MET MY BROTHER.

Q SO, DO YOU THINK YOU'RE BETTER FRIENDS WITH HIM THAN YOUR BROTHER IS?

A BASICALLY, WE'RE ASSOCIATES. YOU DON'T HAVE NO FRIENDS IN JAIL. YOU GOT ASSOCIATES.

Q ACQUAINTANCES, ASSOCIATES, IS THAT THE SAME DIFFERENCE?

A YEAH. BOBBY MET MY BROTHER IN THE COUNTY, HE DIDN'T KNOW HIM ON THE STREET.

Q I GOTCHA. BUT YOU DID KNOW BOBBY ON THE STREET.

A YEAH.

Q AND THE ONLY THING YOU KNOW BOBBY DOES IS STEAL CARS AND HE HAS A TEMPER?

A I KNOW HE STEAL CARS.

[239] Q YOU DON'T KNOW ANYTHING ABOUT HIM HAVING A TEMPER?

A NAH.

Q SO, YOU SAY IN THIS THING THAT YOU SIGNED AND WAS NOTARIZED THAT ANYTHING BASICALLY THAT HURT BOBBY ISN'T TRUE IN HERE. IS THAT RIGHT?

A SAY AGAIN?

Q ANYTHING IN HERE THAT HURT BOBBY HOLMES YOU'RE SAYING IS NOT TRUE, RIGHT? IN OTHER WORDS, YOU CAN'T SAY HE HAS A TEMPER?

A NO.

Q EVEN THOUGH IT WAS IN HERE, RIGHT? YOU CAN'T SAY THAT BOBBY HOLMES WAS TALKING TO YOU AND ASKED YOU IF YOU KNEW JIMMY WHITE. YOU'RE SAYING THAT'S NOT CORRECT NOW?

A I WAS TALKING TO CHARLES RANDOLPH.

Q OKAY. SO, THAT'S NOT CORRECT. ANYTHING CONNECTING BOBBY HOLMES TO THIS THING IS NOT CORRECT. EVEN YOU AND BOBBY GREW UP TOGETHER ISN'T CORRECT. YOU JUST KNOW HIM?

A I KNOWED HIM. NO, WE DIDN'T GROW UP TOGETHER, NOW.

Q OKAY. LET'S GO TO THE NEXT ONE. ALL RIGHT. THE NEXT ONE I HAVE IS GOING TO BE THE ONE FROM MAY OF '97. LET ME LET YOU TAKE A LOOK AT THAT SO EVERYBODY WILL KNOW WHAT WE'RE TALKING ABOUT.

FOR THE DEFENSE, THAT'S GOT 4263 AT THE BOTTOM OF [240] IT. NOW, THIS WAS IN THE PCR HEARING. YOU GAVE THIS STATEMENT IN '97. IS THAT RIGHT? DO YOU NEED A SECOND A LOOK AT IT?

A IN '97?

Q YES SIR.

A WHO I GAVE THIS TO?

Q WELL, UNDOUBTEDLY, ULTIMATELY IT WAS GIVEN TO MR. HOLMES' DEFENSE ATTORNEYS AGAIN, BECAUSE AGAIN I RECEIVE THIS AS A COPY OF THE MOTION.

A OKAY, YEAH.

Q THAT WAS BACK IN '97 WHEN THEY WERE TRYING TO OVERTURN IT ON A PCR. YOU KNOW WHAT A PCR IS?

A YES SIR.

Q SO, THEY HAD COME AND TALKED TO YOU IN '97. ARE YOU AWARE OF THAT?

A YES SIR. YEAH, I REMEMBER.

Q AND THIS ONE, AND I'M JUST GOING BACK TO THE FRONT, NOW. INCARCERATED AT MURRAY FACILITY AT BROAD RIVER CORRECTIONAL FACILITY. BOBBY LEE HOLMES WAS ON THE SAME STATUS AT BROAD RIVER R&E. WHILE WE WERE OUT IN THE YARD ON RECREATION ONE DAY I SPOKE WITH BOBBY LEE HOLMES WHO ASKED IF I KNEW JIMMY WHITE. JIMMY WAS ALSO IN MURRAY FACILITY AND I KNEW WHO HE WAS. I SPOKE TO JIMMY WHITE AND TOLD HIM THAT I HAD TALKED TO BOBBY LEE HOLMES."

NOW, IS THAT TRUE?

[241] A NAH.

Q THAT'S NOT TRUE, OKAY. "JIMMY WHITE THEN TOLD ME THAT THE POLICE HAD ARRESTED BOBBY HOLMES FOR A CRIME HE, BOBBY HOLMES, DID NOT HAVE ANYTHING TO DO WITH."

IS THAT RIGHT?

A SAY AGAIN?

Q I'M JUST READING THE LINE. JIMMY WHITE TOLD YOU THE POLICE HAD ARRESTED BOBBY HOLMES FOR A CRIME THAT HE, BOBBY HOLMES DID NOT HAVE ANYTHING TO DO WITH.

A WELL, BASICALLY . . . NAH. JIMMY DIDN'T SAY IT LIKE THAT. HE DIDN'T SAY IT LIKE THAT.

Q SO, THAT'S NOT REALLY ACCURATE EITHER, RIGHT?

A JIMMY JUST SAID HE ADMIT THAT HE BROKE INTO THE LADY'S HOUSE AND RAPED HER.

Q BROKE INTO HER HOUSE AND RAPED HER?

A YES SIR.

Q OKAY. AND THEN YOU SPOKE TO JIMMY WHITE A FEW TIMES AFTER THAT BUT NEVER GOT BOBBY HOLMES, RIGHT?

A NO SIR.

Q IS THAT CORRECT OR NOT?

A I SPOKE TO JIMMY WHITE A FEW TIMES.

Q EVEN AFTER THAT?

A I NEVER TALKED TO BOBBY. NAH. I DIDN'T SPEAK TO HIM NO MORE.

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[246] Q THAT NIGHT THROUGH THREE-WAY CALLING I SPOKE TO BOBBY HOLMES AND TOLD HIM I HAD BEEN VISITED BY SMITH AND POTTS AND WHAT WAS DISCUSSED. IS THAT RIGHT?

A YES SIR.

Q OKAY. SO YOU CALLED BOBBY HOLMES THAT NIGHT AND TOLD HIM EXACTLY WHAT YOU WERE TALKING ABOUT, RIGHT?

A YES SIR.

Q HOW'D YOU KNOW HOW TO GET IN TOUCH WITH BOBBY HOLMES?

A HE WAS AT THE DETENTION CENTER WITH MY BROTHER.

Q AS A MATTER OF FACT, ONE TIME HE TRIED TO PUT YOUR BROTHER ON THE MAILING LIST OR THE VISITATION LIST OR SOMETHING, DIDN'T HE?

A I DON'T KNOW. I CAN'T SAY FOR SURE.

Q THE NEXT DAY BOBBY HOLMES' ATTORNEY, GERALD SMITH, CAME TO SEE ME AND TOLD ME I SHOULD STAY OUT OF THE HOLMES CASE. IS THAT RIGHT?

A NAH, IT AIN'T. GERALD SMITH CAME DOWN – WHEN MS. POTTS AND MR. SMITH LEFT OUT OF THE OFFICE, THEN GERALD SMITH CAME IN. IT WASN'T THE NEXT DAY, IT WAS FIVE MINUTES LATER.

Q SO, THIS AFFIDAVIT YOU SIGNED FOR THE COURT IN '97 [247] IS NOT CORRECT ON THAT PART, EITHER, RIGHT?

A NAH, NAH, NO SIR. TO TELL YOU THE TRUTH, IT AIN'T.

Q OKAY. BUT YOU SIGNED IT, DIDN'T YOU?

A YES SIR, I SIGNED IT.

Q AND YOU SAID THAT IF YOU WERE CALLED TO WITNESS YOU WOULD TESTIFY TO THE SAME INFORMATION CONTAINED IN THIS AFFIDAVIT, DIDN'T YOU?

A YEAH, THAT COULD BE TRUE, YEAH.

Q BUT THAT'S NOT TRUE, THOUGH, IS IT? YOU SAID YOU'D TESTIFY TO THAT INFORMATION WHEN YOU SWORE TO IT, BUT YOU DIDN'T, DID YOU?

A I AIN'T NEVER SWORE. I AIN'T NEVER SWORE. SEE, PRIOR TO THIS STATEMENT RIGHT HERE. THIS ONE IS JUST – IT'S – MOST OF THE THINGS IN HERE I CAN SAY A LITTLE BIT, I APPROVE OF. WHOEVER WAS TYPING IT JUST WASN'T TYPING IT RIGHT.

Q IS THAT IT?

A I KNOW FOR A FACT THAT IT WASN'T.

Q THEY WASN'T TYPING IT RIGHT. LET ME ASK YOU, GERALD SMITH COMES THE NEXT DAY. YOU SAID THAT WASN'T RIGHT.

A NAH. SMITH DIDN'T COME THE NEXT DAY. HE COME ABOUT FIVE MINUTES AFTER, BECAUSE MR. SMITH AND MS. POTTS WAS UP THERE IN OPERATIONS. THEY LEFT OUT. HE WALKED AROUND THE CORNER.

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[258] Q SO, YOU'VE GOT WHAT, THREE DIFFERENT TIMES COUNTING TODAY?

A WELL, THE TIME IT BE GOING ON, MR. POPE, IT WAS ALL ACCURATE AT THE SAME TIME IN MY PRESENCE, RIGHT. YOU KNOW, TIME, IT WASN'T THAT LONG. IT WASN'T NO NEXT DAY. IT WAS THAT SAME DATE. WHEN THEY LEFT OUT, MR. SMITH CAME IN. IT WAS JUST PLAIN AND SIMPLE. THE ONLY THING YOU CAN DO IS CHECK THE RECORDS AT KIRKLAND WHEN THEY LOGGED IN AT THAT TIME.

Q THE ISSUE HERE, MR. WESTBROOK, IS YOUR VERACITY AND YOUR TRUTHFULNESS.

A YES SIR.

Q AND A MINUTE AGO, YOU ADAMANTLY TOLD ME, OH, THEY ABOUT PASSED EACH OTHER. THEY CAME RIGHT IN AFTER THE OTHER.

A YES SIR, THEY DID.

Q BUT THEN, ONE TIME YOU SAID IT WAS ONE DAY AND ONE TIME YOU SAID IT WAS ANOTHER?

A NO, YOU SAID ONE DAY. I DIDN'T.

Q I'M SORRY, SIR. THE DOCUMENT YOU SIGNED SAID ONE DAY, DIDN'T IT?

A WELL, I SIGNED IT. YEAH, I DID SIGN IT.

* * *

[260] A NAH. JIMMY WHITE, ME AND JIMMY WHITE WAS NEVER AT KIRKLAND TOGETHER. WE WAS AT BROAD RIVER.

Q BECAUSE THE TRUTH OF THE MATTER, JIMMY WHITE, BACK THEN IN '93, WHEN BOBBY

HOLMES' TRIAL WAS STARTING, WAS OUT. HE WAS UP HERE AT YORK, WASN'T HE?

A I DON'T KNOW. BUT I'M SAYING IN '90 I MET JIMMY WHITE. I DIDN'T MEET JIMMY WHITE IN '93. I MET JIMMY WHITE IN '90.

Q I'M NOT TALKING ABOUT MEETING. I'M TALKING ABOUT YOU SAID RIGHT THERE THAT BOOT SMITH AND B. J. POTTS ARE TALKING TO JIMMY WHITE IN YOUR PRESENCE IN THE YARD. IT'S NOT EVEN CLOSE. I MEAN, IT'S IN THE YARD. HE WASN'T IN THE YARD, WAS HE?

A COULDN'T BE. HE WASN'T TALKING TO THEM IN MY PRESENCE. I DON'T KNOW WHERE THEY GET THAT FROM.

Q SO, THAT CAME OUT FROM SOMEWHERE, RIGHT?

A WELL, THEY MUST HAVE BEEN TAKING THE WRONG INFORMATION DOWN.

Q AND PUTTING IT, AND AGAIN, YOU SIGNED IT, RIGHT?

A YEAH, I SIGNED IT.

Q OKAY.

* * *

[263] Q AND THAT'S THE ONLY TIME WE EVER TALKED?

A YEAH.

Q NOW, LET'S SEE. I JUST WANT TO MAKE SURE. TELL THE COURT WHAT HAPPENED. MY PEOPLE WANTED TO MAKE YOU COME TO MAKE YOU LOOK LIKE A RAT. NOW, THESE ARE JUST THE NOTES I TOOK. IF YOU WANT TO CHANGE IT, NO PROBLEM.

THEY WANTED YOU TO SAY ALL THESE THINGS ABOUT BOBBY HOLMES, RIGHT?

A THEY TOLD ME TO SAY THEM.

Q OKAY, TOLD YOU TO SAY THEM.

A YES SIR.

Q HE TOLD YOU THAT WE HAD SOME UNDERWEAR – YOU CORRECT ME IF I'M WRONG. WE HAD SOME UNDERWEAR THAT WAS SOMEBODY ELSE'S UNDERWEAR THAT WE'RE PUTTING ON BOBBY HOLMES. SO WE GOT SOMEBODY TO TESTIFY TO THAT, RIGHT?

A NO. HE DIDN'T TELL ME THAT.

Q THAT'S WHAT YOU SAID EARLIER, WASN'T IT?

A HE TOLD ME SPECIFICALLY – HE TOLD ME THAT I HAD TO GO IN THE COURTROOM, TELL THE JUDGE AND JURY THAT BOBBY HOLMES RAPED THE LADY, SODOMIZED HER AND TOOK FORTY DOLLARS FROM HER WHEN HE BROKE INTO HER HOUSE. AND HE GOT SOME WATCHDOG ATTORNEY FROM D. C. REPRESENTING HIM TRYING TO SAY HE DID IT.

Q MR. NEAL WAS SAYING THAT?

A YEAH. AND MR. PETE SKIDMORE, WHO'S REPRESENTING [264] HIM, HE'S A HOMOSEXUAL.

Q NOW, HE SAID THAT JUST IN THE CONVER – HE DON'T KNOW YOU FROM NOTHING. Y'ALL ARE TALKING AND HE JUST TELLS YOU THAT?

A NAH. MR. NEAL SAY HE BEEN KNOWING ME FOR SIXTEEN YEARS, BUT I TOLD HIM I CAN'T RECALL, REMEMBER HIM. HE SAY HE BEEN KNOWING ME FOR SIXTEEN YEARS FROM ROCK HILL.

Q SO, WHAT DOES SAYING MR. SKIDMORE IS A HOMOSEXUAL HAVE TO DO WITH TRYING TO CONVINCE YOU TO COOPERATE WITH US?

A BECAUSE – HE WAS, LIKE, PETE COME TO SEE YOU. HE SAY, WHO DO YOU THINK PETE IS? I SAY, WELL, PETE IS THE LAWYER, AIN'T HE. HE SAY NO. HE SAY, WHAT DID PETE TELL YOU HE WORKED? I SAY, PETE TOLD ME HE WORKED FOR THE DEFENSE. HE SAID, OH, OKAY, HE COME TO SEE YOU, HE SAY. I SAY, YES SIR. HE SAID, WELL, WHAT DID PETE SAY TO YOU? I SAY, PETE DIDN'T SAY NOTHING TO ME. HE WAS ASKING ME A COUPLE OF QUESTIONS AND I TOLD HIM – I DIDN'T TELL HIM WHAT PETE TOLD ME. I SAY, PETE TOLD ME HE WAS GONNA GET BACK WITH ME, HE'LL BE COMING TO SEE ME BACK AGAIN.

Q OKAY. NOW WHAT DID THAT HAVE TO DO WITH HIM SAYING HE WAS A HOMOSEXUAL?

A BECAUSE I ASKED HIM. I THOUGHT I WAS COMING UP TO [265] SEE MY LAWYER. THAT'S HOW THE CONVERSATION CAME UP. I WAS COMING UP TO SEE MY LAWYER AND I SAY, WELL, IS PETE

HERE. MR. THOMPSON, SAYS, NAH PETE AIN'T YOUR LAWYER. HE DON'T NEED TO BE HERE UNLESS YOU BEEN CHARGED FOR A CRIME. AND I WAS, LIKE, I THOUGHT I COMING TO SEE PETE. THAT'S WHAT GALLARDO AND PULLIAM DONE TOLD ME.

Q ALL RIGHT.

A AND THEN THEY EXPLAINED THE SITUATION WHY I, THAT THEY CAME UP HERE FOR YOU TO SEE ME.

Q OKAY.

A AND THAT I WAS COMING TO SEE AN ATTORNEY NAMED MR. THOMPSON. I TOOK IT AS I WAS COMING UP ON POST CONVICTION.

Q I GOTCHA.

A AND THAT'S HOW PETE BEING A HOMOSEXUAL CAME UP AND THAT WATCHDOG ATTORNEY. THAT'S HOW IT CAME UP. ASK MR. NEAL. HE KNOW. HE WAS THERE. HE SAID IT.

Q HE SAID PETE WAS A HOMOSEXUAL?

A YEAH.

Q I APOLOGIZE. I CAN'T UNDERSTAND HOW THAT – HOW IS THAT GOING TO MAKE YOU HELP US?

A BECAUSE – NAH. BASICALLY, I WAS ASKING HIM, DID I WANT TO SEE HIM. THAT'S WHO I WAS COMING TO SEE. HE BROUGHT UP ALL THAT.

Q THAT THEY GOT A WATCHDOG FROM WASHINGTON AND A [266] HOMOSEXUAL –

A A WATCHDOG ATTORNEY TRYING TO SAVE BOBBY HOLMES, REPRESENTING BOBBY HOLMES.

Q OKAY. LET'S GO BACK. HE TOLD YOU – AGAIN, MR. NEAL – AND THE TWO GUARDS AND MR. NEAL AND MR. THOMPSON WERE IN THERE, RIGHT?

A YEAH, AND YOU CAME IN.

Q RIGHT. WE'VE BEEN THROUGH THAT, RIGHT?

A YEAH.

Q WE'RE CLEAR ON THAT, RIGHT, OTHER THAN YOU SAYING THAT I SNATCHED YOU UP?

A YEAH.

Q THESE GUYS CONFIDED IN YOU THAT WE DIDN'T HAVE A PALM PRINT OF BOBBY HOLMES ON THE DOOR?

A NO. HE SAID, HE CAN – HE SAID THAT THE PALM PRINT THAT HE CONFISCATED FROM BOBBY HOLMES HE CAN LINK IT TO BOBBY HOLMES IN THE HOUSE.

Q RIGHT. SO THAT'S NOT WHAT YOU EXACTLY SAID THE FIRST TIME. AND AGAIN, I APOLOGIZE. I WAS WRITING NOTES. THE FIRST TIME I THOUGHT –

A NAH.

Q – YOU SAID – I'M NOT TRYING TO PUT WORDS IN YOUR MOUTH. I JUST WANT TO BE SURE I UNDERSTAND YOU. THE FIRST TIME, DIDN'T YOU SAY THAT THEY DIDN'T HAVE THE PALM PRINT?

[267] A NO, THAT AIN'T WHAT I SAID.

Q OKAY, WHAT'D YOU SAY?

A I SAID THAT MR. CHUCK NEAL TOLD ME ABOUT THE PALM PRINT.

Q CHUCK –

A THE PALM PRINT, THAT HE CONFISCATED A PALM PRINT OUT OF THE COUNTY JAIL FROM BOBBY HOLMES OFF THE DOOR. AND HE CAN LINK IT TO BOBBY HOLMES IN THE HOUSE.

Q OKAY, THAT'S WHAT –

A THAT'S WHAT HE TOLD ME.

Q SO, NOW, THEY'VE GOT A PALM PRINT OFF THE DOOR. MR. NEAL TOLD YOU, NOW, WE'RE FRAMING BOBBY HOLMES, ACCORDING TO MR. NEAL, RIGHT? RIGHT?

A YOU GOT –

Q IS THAT WHAT YOU SAID?

A THAT'S WHAT HE SAID.

Q OKAY, SO –

A NOT WHAT I SAID. THAT'S WHAT MR. NEAL SAID.

Q SO, MR. NEAL TELLS YOU – THAT'S WHAT I'M SAYING, THAT'S WHAT YOU HEARD.

A YES SIR.

Q OKAY. SO MR. NEAL TELLS YOU WE FRAMED UP BOBBY HOLMES. ONE WAY WE FRAMED UP BOBBY HOLMES IS WE GOT HIS PALM PRINT OFF THE DOOR AT THE JAIL AND WE'RE GOING TO STICK IT AND PRETEND LIKE IT'S FROM THE HOUSE, RIGHT?

[268] A YEAH.

Q AND MR. –

A AND SOME UNDERWEAR.

Q WELL, I'M GOING TO GET TO THAT.

A I KNOW YOU ARE.

Q MR. NEAL TOLD YOU THAT, RIGHT?

A YES SIR.

Q TOLD YOU THAT AND YOU SAID YOU AIN'T GONNA COOPERATE ANYWAY AND YOU'RE FRIENDS WITH BOBBY. BUT HE'S GONNA TELL YOU THAT?

A NO. BEFORE I EVEN – WHEN I WAS SETTING DOWN HE HAD BROUGHT OUT ALL THOSE FACTS TO ME.

Q OH, I SEE. BEFORE HE KNEW THAT YOU WEREN'T GONNA COOPERATE WITH HIM HE WAS KIND OF GIVING YOU THE INSIDE ON WHAT'S GOING ON ABOUT FRAMING BOBBY?

A NO. WHAT I SHOULD SAY.

Q OKAY.

A WHAT HE WANTED ME TO SAY.

Q WELL, WHY WOULD HE TELL YOU HE GOT STUFF OUT OF THE JAIL. HE DIDN'T NEED YOU TO SAY THAT. WE HAD THAT, RIGHT?

A I KNOW. HE SAY HE DIDN'T NEED ME. THE ONLY THING HE SAY HE NEEDED ME TO COME SAY IS BECAUSE, THE ONLY THING HE NEEDED ME TO SAY IS THAT BOBBY HOLMES TOLD ME HE RAPED THE OLD LADY, BROKE INTO HER HOUSE, STOLE [269] FORTY DOLLARS, SODOMIZED HER.

Q AND THAT WAS EXACTLY WHAT HE WANTED YOU TO SAY ABOUT BOBBY HOLMES?

A YEAH.

Q WELL, LET ME ASK YOU THIS, WHAT ABOUT THE UNDERWEAR? YOU STARTED SAYING AND I INTERRUPTED YOU. WHAT ABOUT THE UNDERWEAR? WHAT DID HE TELL YOU ABOUT HOW WE'RE GOING TO FRAME BOBBY HOLMES WITH THE UNDERWEAR?

A HE SAID THAT HE HAD GOT SOME UNDERWEAR FROM THE COUNTY JAIL FROM BOBBY HOLMES. THAT'S ALL HE JUST SAID. AND HE GOT A PALM PRINT FROM THE COUNTY JAIL OFF THE DOOR FROM BOBBY HOLMES AND WE CAN'T LINK HIM TO THAT. BUT THE JUDGE MIGHT NOT LET THE JURY INTRODUCE THAT AS EVIDENCE, SO WE NEED YOU TO COME UP HERE AND TESTIFY THAT BOBBY HOLMES TOLD HE TOOK FORTY DOLLARS

FROM THAT LADY AND RAPED HER AND BROKE INTO HER HOUSE.

Q SO, THE THING ABOUT THE UNDERWEAR – DID I UNDERSTAND YOU ONE TIME TO SAY THAT HE SAID WE HAD SOMEBODY ELSE'S UNDERWEAR?

A THAT'S WHAT – YEAH, YES SIR.

Q SO, HE SAID WE HAD SOMEBODY ELSE'S UNDERWEAR WE WERE GONNA PUT ON BOBBY BASICALLY, RIGHT?

A THAT'S WHAT MR. NEAL SAID.

Q NOW, ARE YOU AWARE THAT THE TRUTH OF THE MATTER IS WE GOT BOBBY HOLMES' PALM PRINT OFF THE DOOR IN THAT [270] WOMAN'S HOUSE THAT WAS KILLED? ARE YOU AWARE OF THAT?

A I AIN'T AWARE OF THAT.

Q OKAY.

A YOU GOT TO TALK TO MR. NEAL ABOUT THAT.

Q OKAY.

A HE BROUGHT OUT THOSE FACTS TO ME FIRST. I DIDN'T KNOW NOTHING ABOUT HIM.

Q OKAY. DO YOU KNOW ANYTHING ABOUT THE FACT THAT WE GOT BOBBY HOLMES' UNDERWEAR WITH THAT WOMAN'S BODILY FLUIDS INSIDE OF THEM?

A I DON'T KNOW. MR. NEAL TOLD ME A DIFFERENT STORY, MR. POPE.

Q SO HE WAS TELLING YOU A STORY ABOUT HOW WE'RE GOING TO FRAME SOMEBODY?

A THAT'S WHAT HE TELL ME.

Q ALL RIGHT.

A BOTH OF THEM, TOO, SITTING RIGHT THERE. THEY CAN TELL YOU.

* * *

[Defense Witness James White –
Direct Examination By Mr. MacDougall]

[289] Q WERE YOU EVER CHARGED WITH ASSAULT AND BATTERY?

A BACK WHEN I WAS IN JUVENILE. I HAD HIT A AUNT.

Q DID WHAT?

A I HAD HIT A AUNT, AUNT CARRIE, CARRIE HOLMES. SHE HAD SLAPPED ME AND WE WAS OVER AT CLYDE'S. I WAS REALLY TALKING TO THIS GIRL NAMED BRENDA MOBLEY AND PAUL. HER BROTHER NAME PAUL. THEY WAS SUPPOSED TO HAVE BEEN MY WITNESS. BUT THEN THEY DIDN'T HAVE NOTHING TO DO WITH THAT WHEN WE IN FRONT OF THE JUDGE.

AND WE WAS OVER AT CLYDE'S AND SHE SAY – I WAS ABOUT FIFTEEN OR SIXTEEN YEARS OLD. SHE KEPT ON TELLING ME I NEED TO BE WITH MY YOUNG SELF AT HOME AND ALL THAT LIKE THAT.

Q THIS WAS YOUR AUNT?

A NO, THAT'S HIS AUNT.

Q HIS AUNT?

A I THINK. AND SHE KEPT ON SAYING I NEED TO BE MY YOUNG SELF AT HOME. I NEED TO BE MY YOUNG SELF AT HOME. AND I JUST – BACK THEN I HAD A REAL BAD TEMPER AND EVERYTHING. AND I SAY, I SAY YOU DON'T TELL ME WHAT TO [290] DO. AND I CURSED HER OUT AND ALL THAT. SHE SAY SHE'LL SLAP ME. AND I TOLD HER IF SHE SLAP ME I WAS GONNA HIT HER BACK. SHE SLAPPED ME AND I HIT HER BACK.

AND SHE FELL DOWN AND I GUESS SHE HIT HER JAW, LIKE, ON THAT CONCRETE. AND THEN SHE TOOK ME TO COURT WHEN I WAS A JUVENILE. I DID TIME AT THE JUVENILE FOR THAT.

Q HOW ABOUT CRIMINAL DOMESTIC VIOLENCE? WERE YOU EVER CHARGED WITH THAT?

A YES SIR. THAT'S RIGHT. FIGHTING DUDES, THOUGH, THAT'S ALL.

Q IN 1992, YOU WERE CHARGED WITH CRIMINAL DOMESTIC VIOLENCE IN 1992?

A WAS THAT WITH MY GIRLFRIEND, BETSY BROWN?

Q I'M JUST ASKING YOU.

A I DON'T –

Q MR. WHITE, –

A NO, I CAN'T REMEMBER.

Q MR. WHITE –

A I COULDN'T REMEMBER.

Q MR. WHITE, THE WAY IT'S GOING TO WORK HERE IS I'M GOING TO ASK QUESTIONS AND I'LL ASK YOU TO ANSWER THEM. IF YOU DON'T UNDERSTAND MY QUESTION, YOU ASK ME TO CLARIFY IT. ARE YOU OKAY ON THAT?

A OH, YEAH.

Q OKAY. YOU TESTIFIED A FEW MINUTES AGO THAT THE ONLY [291] TIMES YOU'VE BEEN ARRESTED INVOLVED DISORDERLY CONDUCT OR DRIVING UNDER THE INFLUENCE.

I'M NOW ASKING YOU, IN 1992 WERE YOU CHARGED AND, IN FACT, CONVICTED OF CRIMINAL DOMESTIC VIOLENCE?

A I CAN'T REMEMBER.

Q YOU DON'T REMEMBER?

A NO SIR.

MR. MacDOUGALL: I WILL HAVE THIS MARKED. THIS IS A DOCUMENT BEARING STAMP NUMBERS 000892 THROUGH 896, MARKED ARREST RECORD. I'M GOING TO SHOW THE WITNESS PAGE BEGINNING WITH 3/28/92.

Q FIRST OF ALL, MR. WHITE, DO YOU RECOGNIZE THAT AS YOUR ARREST RECORD?

MR. POPE: YOUR HONOR, I DON'T OBJECT, BUT COULD HE SHOW HIM THE ENTIRE RECORD AND GIVE YOU A COPY?

A I CAN'T EVEN READ THIS.

THE COURT: WHY DON'T YOU MAKE IT AN EXHIBIT AND HAND IT TO ME AND I'LL. . . . I'M NOT TRYING TO TELL YOU WHAT TO DO BUT I THINK THAT MIGHT BE THE QUICKEST AND I CAN PERUSE IT.

MR. MacDOUGALL: YES SIR.

Q LET ME GO BACK TO WHERE I WAS, MR. WHITE. IN 1992 WERE YOU CHARGED AND, IN FACT, CONVICTED OF CRIMINAL DOMESTIC VIOLENCE?

A I AIN'T – THE ONLY THING – I AIN'T DID NO STATE [292] TIME FOR NO CRIMINAL DOMESTIC VIOLENCE. I MIGHTA BEEN IN JAIL OR TO THE CHAIN GANG FOR THAT. I HADN'T GOT BUT TWO OF THEM ON MY RECORD. I GOT ONE THAT I'M IN THE COUNTY JAIL RIGHT NOW FOR THAT. AND THEN I GOT ONE, THAT MIGHTA BEEN MY GIRLFRIEND, BETSY BROWN. ME AND HER GOT IN A FIGHT A COUPLE OF TIMES.

Q WHAT DID YOU DO TO BETSY BROWN WHEN YOU GOT IN A FIGHT?

A WE DO FIGHTING, YOU KNOW.

Q DID YOU HIT HER?

A WE FIGHT.

Q DID YOU HIT HER?

A NO, I DIDN'T HIT HER. I PUSHED HER DOWN.

Q DID SHE FALL?

A HUH?

Q DID SHE FALL?

A I GUESS SHE DID, YEAH.

Q DID SHE GET HURT?

A NO, SHE DIDN'T GET HURT.

Q HOW ABOUT BOBBY LEE'S AUNT, WHEN YOU HIT HER IN THE JAW, DID SHE GET HURT?

A NO. SHE WENT TO COURT.

Q YOU TESTIFIED A FEW MINUTES AGO YOU HIT HER IN THE JAW.

A SHE DIDN'T GO TO THE HOSPITAL.

[293] Q WERE YOU CHARGED IN 1993 WITH AGGRAVATED BATTERY OF A HIGH AND AGGRAVATED NATURE? I'M SORRY. ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE?

A SIR, I CAN'T REMEMBER ALL THIS STUFF FROM WAY BACK THEN. I DON'T KNOW ABOUT THAT. LIKE I SAY, I MIGHTA WOULD, BECAUSE I WAS PRETTY BAD BACK THEN. I WAS WANTING TO FIGHT ALL THE TIME, FIGHT ALL THE TIME. DRUNK, JUST FIGHTING.

Q DID YOU –

A BUT MOST OF THE TIME I LOST THE FIGHT.

Q DO YOU FIGHT ANYMORE?

A NO, I QUIT THAT. I'M IN HERE NOW FOR CRIMINAL DOMESTIC VIOLENCE, ME AND MY GIRLFRIEND. THE GIRL I GO WITH NOW, ME AND HER NEPHEW GOT INTO IT BACK ON THE FOURTH OF, FOURTH OF – IT WAS ABOUT JUNE SOMETHING. IT WAS BEFORE THE FOURTH OF JULY. AND HE GOT OUT AND THEY MET ME OUT ON THE ROAD AND EVERYTHING.

Q DID YOU HIT HIM?

A NAH. NO. WE JUST – MY GIRLFRIEND TOLD HIM WE WAS FUSSING AND ARGUING AND EVERYTHING LIKE THAT. AND WHEN THE POLICE GOT THERE I WAS DRUNK AND I WAS TALKING BACK TO THE POLICE AND THEY JUST TOOK ME TO JAIL. I WAS CURSING AND GOING ON, ALL LIKE THAT.

Q DO YOU GET VIOLENT WHEN YOU GET DRUNK, MR. WHITE?

A NOT REALLY, NO.

[294] Q NOT ANY MORE THAN USUAL?

A NOT THAT I KNOW OF.

Q SO, WHEN YOU TESTIFIED A FEW MINUTES AGO THAT YOU HIT BOBBY HOLMES' AUNT, WERE YOU SOBER?

A I WAS SOBER THEN.

Q HOW ABOUT WHEN YOU GOT IN A FIGHT WITH YOUR GIRLFRIEND'S NEPHEW YOU TALKED ABOUT A LITTLE WHILE AGO, WERE YOU SOBER?

A NO, WE WAS DRINKING. I WAS ON MY WAY TO GETTING DRUNK.

Q HOW ABOUT 1993 WITH YOUR GIRLFRIEND, WERE YOU SOBER OR DRUNK?

A I WAS PROBABLY DRUNK. I CAN'T REMEMBER IT. MAN, THAT WAS A LONG TIME AGO. I AIN'T REMEMBER NOTHING LIKE THAT.

Q A LONG TIME AGO. A LOT HAS HAPPENED SINCE THEN, HASN'T IT?

A HUH?

Q A LOT HAS HAPPENED SINCE THEN, HASN'T IT?

A A LOT.

Q LET'S GO BACK TO 1989, DECEMBER 30, 1989. DO YOU REMEMBER THAT NIGHT? THAT WAS A LONG TIME AGO, TOO.

A DO WHAT, NOW?

Q DECEMBER 30, 1989, DO YOU REMEMBER THAT NIGHT?

A DO I REMEMBER?

[295] Q DO YOU REMEMBER –

A WHAT, WHAT?

Q – WHAT YOU WERE DOING DECEMBER 30, 1989?

A I DON'T KNOW WHAT I WAS DOING. WHAT I SUPPOSED TO KNOW? TELL ME WHAT HAPPENED THAT NIGHT.

MR. MacDOUGALL: YOUR HONOR, MAY I APPROACH THE WITNESS?

THE COURT: SURE.

MR. MacDOUGALL: I BELIEVE THIS HAS ALREADY BEEN MARKED AS A COURT'S EXHIBIT.

MR. POPE: NO OBJECTION.

MR. MacDOUGALL: THIS IS COURT'S EXHIBIT ONE, YOUR HONOR. MAY I APPROACH?

THE COURT: SURE.

Q MR. WHITE, I'D LIKE YOU TO TAKE A LOOK AT WHAT I'VE JUST HANDED YOU WHICH HAS BEEN MARKED AS COURT'S EXHIBIT ONE.

A (NO RESPONSE)

Q YOU CAN'T READ IT?

A NO, NOT MOST OF THE WORDS.

MR. MacDOUGALL: WITH THE COURT'S PERMISSION I WILL READ IT FOR THE WITNESS.

THE COURT: YES SIR.

Q MR. WHITE, AS I READ THIS, IF THERE IS ANYTHING THAT I MISPRONOUNCE OR YOU DON'T UNDERSTAND, LET ME KNOW.

[296] "THIS IS MY VOLUNTARY STATEMENT DATED APRIL 2, 1990. PLACE, BROAD RIVER CENTER; TIME STARTED, 1:31 P.M. UNDERSIGNED JAMES McCAW, A/K/A JIMMY WHITE AT TWENTY-THREE YEARS OF AGE. MY DATE AND PLACE OF BIRTH BEING THE TWENTY-SEVENTH DAY OF MARCH, 1967. AND YOU ARE COUNTY 7270625, AN INMATE OF THE BROAD RIVER CENTER, 4460 BROAD RIVER ROAD, COLUMBIA, SOUTH CAROLINA. ANSWERING ANY QUESTIONS OR MAKING ANY STATEMENTS, SERGEANT JAMES A. SMITH, YORK CITY POLICE OFFICER, 29210."

AND THE HANDWRITTEN PART READS AS FOLLOWS: "ON FRIDAY, DECEMBER 29, 1989 I STAYED IN SHARON, SOUTH CAROLINA. I DIDN'T GO TO YORK UNTIL SATURDAY NIGHT ABOUT TEN P.M. I WAS AT MY BROTHER'S PLACE IN SHARON FRIDAY NIGHT. ALEX McCOY IS MY BROTHER. HE RUNS THE SHACK IN SHARON. I LIVES NEXT TO IT. ON SATURDAY, JUNIOR LYTER, (JOSHUA LYTER) AND MICHAEL BURKIN RODE WITH US TO CLYDE'S PLACE. WE GO TO CLYDE'S ABOUT TEN P.M. JUNIOR AND MICHAEL WENT TO THE CARPET NIGHTCLUB. I STAYED AT CLYDE'S. I DIDN'T LEAVE THERE UNTIL THOSE FELLOWS, JUNIOR AND MICHAEL, CAME BACK FROM THE CARPET. WHILE AT CLYDE'S I DRANK SOME BEER AND DANCED. JUNIOR AND I WAS THE ONLY ONE WHO WENT TO SHARON THAT NIGHT. WE LEFT CLYDE'S ABOUT ONE-THIRTY A.M. AND ARRIVED AT MY HOUSE ABOUT TWO A.M. ON 12/31/89. I HAD TO KNOCK ON THE DOOR [297] TO GET IN. MAMA, CARRIE LEE McCOY, OPENED THE DOOR AND I WENT IN AND WENT TO BED.

I GOT UP LATER THAT MORNING AND WALKED DOWN TO JUNIOR'S HOUSE. SOME OF THE FELLOWS WAS TALKING ABOUT SOME LADY GOT RAPED IN YORK. I DIDN'T KNOW THE LADY. I HEARD BOBBY HOLMES DID IT. I KNOW I DIDN'T DO IT.

ABOUT A MONTH BEFORE THE LADY GOT RAPED I WAS OVER AT CLYDE'S AND NEEDED A RIDE HOME. I KNEW TINA HOLMAN. I ASKED HER HOW SHE WAS TRAVELING. SHE SAID HER BROTHER, JUNE BUG. I TOLD HER TO ASK JUNE BUG FOR A RIDE. THEY GAVE ME A RIDE IN A LITTLE BLUE STATION WAGON.

LATER I FOUND OUT IT (STATION WAGON) WAS STOLEN. BOBBY HOLMES' DADDY AND MICHAEL BURKINS' MOTHER ARE SISTER AND BROTHER. THIS IS ALL I KNOW. I DIDN'T RAPE NO WOMAN OR BEAT NO WOMAN."

WERE YOU ABLE TO FOLLOW THAT WITH ME, MR. WHITE?

A UH-HUH.

Q LET ME ASK THE QUESTION AGAIN NOW THAT YOUR RECOLLECTION HAS BEEN REFRESHED. DO YOU RECALL THE NIGHT OF DECEMBER 30, 1989?

A I THINK I REMEMBER IT.

Q IS THAT YOUR SIGNATURE IN THE LOWER RIGHT-HAND CORNER OF THAT DOCUMENT?

A YEAH.

Q IS THAT YOUR HANDWRITING OR IS THAT BOOT SMITH'S [298] HANDWRITING?

A WHEREABOUTS?

Q AT THE –

A MY NAME?

Q NO, NOT YOUR NAME, THE WRITTEN PART, THE TEXT. THE PART I JUST READ. DID YOU WRITE THAT YOURSELF OR DID BOOT SMITH WRITE IT?

A I THINK HE WROTE IT.

Q YOU DON'T RECOGNIZE THAT AS YOUR HANDWRITING?

A NO, THAT AIN'T MY WRITING.

Q BUT THAT IS YOUR SIGNATURE?

A YEAH, THAT'S MY SIGNATURE.

Q IS EVERYTHING IN THIS STATEMENT TRUE?

A EXCEPT ONE PART. WHEN WE WENT BACK TO SHARON, JUNIOR AND MICHAEL WENT BACK WITH US.

Q MICHAEL WHO?

A MICHAEL BURKINS.

Q WHEN YOU WENT BACK WHERE?

A WHEN WE WENT BACK HOME, WHEN WE LEFT CLYDE'S.

Q SO, YOU SAY THAT'S INCORRECT?

A YEAH. IT WASN'T NO JUST ME AND JUNIOR WENT BACK HOME. MICHAEL WAS WITH US.

Q SO, YOUR TESTIMONY IS THAT JUNIOR LITTLE DROVE YOU HOME?

A YEAH.

[299] Q WHO WAS DRIVING?

A HE WAS.

Q AND ANYONE WHO TESTIFIED THAT JUNIOR LYTER DIDN'T GIVE YOU A RIDE HOME THAT NIGHT BE TELLING THE TRUTH?

A WELL, HE SAID HIMSELF, HE AIN'T GETTING INVOLVED WITH THIS OR NOTHING LIKE THAT RIGHT THERE. HE SAYING HE AIN'T GIVE ME NO RIDE HOME. SO I AIN'T GOT NO WITNESS, YOU KNOW.

Q HOW DO YOU KNOW HE'S BEEN SAYING HE DIDN'T GIVE YOU A RIDE HOME?

A BECAUSE THAT'S WHAT EVERYBODY'S BEEN TELLING ME. HE EVEN TELL ME HIMSELF.

Q WHO'S BEEN TELLING YOU?

A HIS DADDY, YOU KNOW. A LOT OF PEOPLE TELLS ME HE SAY WELL, . . . THEY EVEN TOLD ME. THEY SAID JUNIOR SAID HE DID GIVE YOU NO RIDE HOME.

* * *

[303] Q YOU WERE AT HOME WHEN?

A WE LEFT THAT PLACE ROUND ABOUT ONE. I THINK IT DON'T TAKE BUT ABOUT FIFTEEN MINUTES TO GET TO SHARON. SO, ABOUT ONE-FIFTEEN OR TWO. IT WAS ANYWHERE CLOSE TO THERE.

Q THAT'S WHEN YOU GOT HOME?

A YEAH.

Q SO, ANYONE WHO SAW YOU AFTER THAT OUTSIDE YOUR HOME WOULD NOT BE TELLING THE TRUTH. IS THAT RIGHT?

A YEAH.

Q SO, YOUR TESTIMONY HERE IS AFTER ONE-FIFTEEN YOU COULD NOT HAVE BEEN ANYWHERE NEAR PECAN COURT OR CALIFORNIA STREET?

A NO.

Q YOUR TESTIMONY WOULD BE, THEN, I TAKE IT, THAT ANYONE WHO SAW YOU ON PECAN COURT OR CALIFORNIA STREET AFTER TWO A.M. WOULD BE LYING?

A SURE WOULD BE.

Q YOUR TESTIMONY IS THAT IF ANYONE, INCLUDING YOUR FOSTER MOTHER. YOUR STEPMOTHER TESTIFIED YOU CAME IN [304] AFTER TWO A.M., THAT WOULD BE UNTRUE?

A NO, THE ONLY THING – I DID NOT SAY THAT. IT WAS ANYWHERE FROM ONE TO TWO SOMETHING. THAT'S WHAT I JUST NOW SAID THAT.

Q DO YOU KNOW –

A AND IF I WAS ANYWHERE OVER THAT WAY, LIKE I SAID, I BE DRUNK AND, LIKE, IF I WOULD HAVE BEEN THERE ANYWAY. AIN'T NO WAY I COULD HAVE GOT TO SHARON THAT FAST, DRUNK AS I BE. AND THEY'D HAVE GOT ME RIGHT THEN AND THERE, YOU KNOW. I'D BEEN – DRUNK AS I BE.

Q HOW'D YOU GET AWAY?

A THAT'S WHAT I'M TELLING YOU NOW. HOW DID I GET AWAY? YOU TELL ME THAT.

Q DO YOU KNOW AN INDIVIDUAL BY THE NAME OF STEPHEN WESTBROOK?

A (NO RESPONSE)

Q STEPHEN WESTBROOK?

A DONALD, DONALD WESTBROOK.

Q I'M SORRY?

A I KNOW A DUDE NAMED DONALD WEST-BROOK.

Q WERE YOU EVER IN MARION DORM AT BROAD RIVER?

A YEAH.

Q IN 1990?

A YEAH.

* * *

[305] Q DID YOU TELL MR. WESTBROOK IN 1990 THAT YOU HAD ATTACKED MARY STEWART, BROKE INTO HER HOUSE AND RAPED HER?

A SHOOT, NO. MAN, IF I'D – MAN, IF I WOULD HAVE DID SOMETHING LIKE THAT I WOULDN'T TELL IT. I AIN'T GOT NO EDUCATION, BUT I AIN'T CRAZY. I WOULDN'T TELL NOBODY NO STUPID STUFF LIKE THAT.

* * *

[308] Q IN THE PRESENCE OF THOMAS WHITE – I'M SORRY. IN THE PRESENCE OF THOMAS MURRAY IN 1992, DID YOU ADMIT THAT YOU HAD ATTACKED, RAPED AND KILLED MARY STEWART AND THAT BOBBY LEE HOLMES WAS ACCUSED WRONGLY?

A I TELL YOU, I JUST TOLD YOU, I AIN'T TOLD NOBODY NOTHING LIKE THAT. THEY GOT – THEY CAN'T PUT NO WORDS IN MY MOUTH. I AIN'T – WHAT YOU THINK, I'M STUPID OR SOMETHING? DAMN.

Q MR. WHITE, DO YOU KNOW AN INDIVIDUAL BY THE NAME OF JOHN DICKSON?

A WHO IS THAT?

Q JOHN DICKSON, DO YOU KNOW JOHN DICKSON?

A HUH-UH.

Q DID YOU KNOW JOHN DICKSON WHEN YOU WERE INCARCERATED IN THE YORK COUNTY DETENTION CENTER?

A HUH? THEY WOULDN'T EVER LET ME STAY IN THE DETENTION CENTER. THEY ALWAYS RUN ME BACK TO YORK.

[309] Q DID YOU TELL JOHN DICKSON THAT YOU HAD COMMITTED THE CRIME AGAINST MRS. STEWART AND YOU WERE OFF THE HOOK BECAUSE THEY HAD ALREADY CHARGED BOBBY LEE HOLMES?

A SHOOT, NO. MAN, HOW MANY TIMES I HAVE TO TELL YOU? IF I DIDN'T TELL THEM, WHAT YOU THINK I'M GONNA TELL HIM THAT FOR?

Q DO YOU KNOW NANCY BENNETT?

A NANCY BENNETT? NO, NOT THAT I CAN RECALL OF.

Q DO YOU RECALL EVER GOING INTO THE YORK COUNTY PUBLIC DEFENDER'S OFFICE?

A I AIN'T HAD BUT ONE PUBLIC DEFENDER IN MY WHOLE LIFE AND THAT WAS MR. BOYD, JOE BOYD. THAT I KNOW OF, ANYWAY.

Q DID YOU GO IN THE YORK COUNTY PUBLIC DEFENDER'S OFFICE AND TELL MS. BENNETT IN 1992 THAT YOU KNEW WHO ATTACKED MARY STEWART AND –

A I AIN'T NEVER BEEN –

Q – AND IT WASN'T BOBBY HOLMES?

A – TO NO PUBLIC DEFENDER'S OFFICE.

Q YOU'VE NEVER BEEN IN THE YORK COUNTY PUBLIC DEFENDER'S OFFICE. IS THAT WHAT YOU'RE SAYING?

A NOT UNLESS – THE ONLY TIME I EVER BEEN TO A PUBLIC DEFENDER'S OFFICE IS WHEN THE

OLD COURTROOM WAS OPEN. THAT'S THE ONLY TIME I EVER BEEN IN A PUBLIC DEFENDER'S OFFICE. I DON'T EVEN KNOW WHERE THE PUBLIC DEFENDER'S OFFICE AT.

* * *

[314] Q NOW, MOVING FURTHER DOWN, HE, MEANING YOU, MR. WHITE, ALSO – I'M TWO SENTENCES DOWN FROM WHERE I WAS. "HE ALSO ACKNOWLEDGES ASSAULTING ANOTHER WOMAN WITH BRASS KNUCKLES AGE SIXTEEN DURING AN ARGUMENT IN A BAR AND SERVED ANOTHER SEVEN MONTHS AT BIRCHWOOD." IS THAT YOU?

A NAH, NOT NO BRASS KNUCKLES.

Q YOU JUST HIT –

A I AIN'T NEVER USED NO BRASS KNUCKLES IN MY LIFE.

Q WHAT'D YOU HIT HER WITH?

A WHO?

Q THE WOMAN THAT YOU HIT WHEN YOU WERE SIXTEEN?

A I THINK THAT WAS A LIE. IT WAS WITH MY HAND. I THINK THAT WAS A LIE.

Q MR. WHITE, FURTHER DOWN –

MR. MacDOUGALL: YOUR HONOR, MAY I APPROACH?

THE COURT: YES SIR.

Q LET ME SHOW YOU WHERE I'M GOING TO BE, MR. WHITE. STARTING WHERE IT SAYS IMPRESSIONS AND RECOMMENDATIONS.

[315] DO YOU SEE WHERE I AM? I'M READING THE SECOND SENTENCE UNDER IMPRESSIONS AND RECOMMENDATIONS.

"HE DID NOT PRESENT GROSS PHYSICAL ABNORMALITIES, ALTHOUGH HIS HYGIENE WAS MARGINAL. HIS ARM INCLUDED SMALL SCARS, REPORTEDLY FROM FIGHTS WITH HIS GIRLFRIEND AND OTHER MALES."

DID YOU TELL MR. WARREN THAT YOU HAD SCARS ON YOUR ARMS FROM FIGHTS WITH YOUR GIRLFRIEND AND OTHER MALES?

A MAN, I DON'T – JUST LIKE I KEEP – I DON'T EVEN KNOW WHO YOU TALKING ABOUT.

Q I'M TALKING ABOUT YOU, MR. WHITE.

A I'M TALKING ABOUT WHO WROTE THIS. I DON'T EVEN THE DUDE WHO YOU TALKING ABOUT.

Q I'M GOING TO ASK YOU TO GO TO THE BOTTOM OF THE PAGE AND I'M GOING TO READ YOU THREE SENTENCES AT THE END OF THE LAST LINE.

MR. MacDOUGALL: MAY I APPROACH, YOUR HONOR?

THE COURT: CERTAINLY.

Q THE LAST LINE ON THIS PAGE READS AS FOLLOWS: "SEXUAL FANTASIES WITH THEMES OF

DOMINANCE AND CONTROL APPEAR TO DOMINATE HIS PSYCHE AND COULD BE MANIFESTED ON A BEHAVIORAL LEVEL AT INAPPROPRIATE TIMES AND PLACES. HE WOULD BE MOST UNPREDICTABLE IN HIS RESPONSE TO THREAT OR PRESSURE TO PERFORM. AND CRIMES COMMITTED BY THIS CLIENT WILL USUALLY BE SENSELESS AND DISORGANIZED, SUCH [316] THAT HE WOULD BE EASILY APPREHENDED."

IS HE TALKING ABOUT YOU THERE? DO YOU HAVE FANTASIES OF –

A NAH.

Q – OF DOMINANCE?

A HUH-UH. I DON'T HAVE NO KIND OF – WHEN I GOT – WHEN I GOT OUT OF PRISON, I GOT OUT OF PRISON IN '97. AND I MET THIS GIRL, THE ONE I'M WITH NOW. I WENT WITH THE GIRL, BETSY BROWN, POSSIBLY I WENT WITH HER, I THINK I WAS FIFTEEN AND SHE WAS TWENTY-FIVE AND SOMETHING LIKE THAT. I BEEN WITH HER FOR THIRTEEN YEARS. THAT'S THE ONLY GIRL I EVER MESSED WITH. AND I GOT WITH THIS GIRL RIGHT HERE AND I GO WITH HER FOR THREE YEARS. AND I STILL AIN'T MESSED WITH ANOTHER GIRL. AND THE ONLY REASON I WON'T MESS WITH NO GIRL RIGHT NOW IS BECAUSE I'M SCARED ONE OF THEM MIGHT BE SOME KIN TO HIM AND GO TELL SOMEBODY I RAPED HER AND GET SOMEBODY ELSE TO BEAT HER UP. I AIN'T STUPID, NAH. I DON'T NEED BUT ONE GIRL. AND I DON'T FANTASIZE ABOUT

THEM, 'CAUSE I GOT ONE. I SLEEP WITH ONE EVERY NIGHT WHEN I AIN'T IN HERE.

* * *

[322] A NO. I ASKED HIM WOULD I HAVE TO BE IN COURT. HE SAY THEY PROBABLY WOULD BRING ME TO COURT. AND I TOLD HIM, DID HE REALLY THINK I DID I'1. HE SAY NO. I SAY DO THEY GOT EVIDENCE ON HIM. AND HE SAY YEAH. THEN HE TOLD ME WHAT ALL THEY HAD. AND SAY, DO Y'ALL GOT EVIDENCE ON ME. HE SAY AIN'T NONE OF MINE MATCH.

* * *

STATE OF SOUTH CAROLINA	) COURT OF GENERAL : SESSIONS
COUNTY OF YORK	) SIXTEENTH JUDICIAL : CIRCUIT
THE STATE, PLAINTIFF, VERSUS BOBBY LEE HOLMES, DEFENDANT.	) VOLUME II : TRANSCRIPT OF RECORD) 90-GS-46-1196 : 90-GS-46-1197) 90-GS-46-1198 : 90-GS-46-1200) AUGUST 15, 2000 : YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE JOHN C. HAYES III, JUDGE

APPEARANCES:

FOR THE STATE:

THOMAS E. POPE, ESQ., SOLICITOR
KEVIN S. BRACKETT, ESQ.,
DEPUTY SOLICITOR
WALTER W. THOMPSON, ESQ.,
ASSISTANT SOLICITOR

FOR THE DEFENSE:

WILLIAM N. NETTLES, ESQ.
JAMES W. MORTON, ESQ.
MARK J. MacDOUGALL, ESQ.
ELIZABETH R. YANG, ESQ.

* * *

[Defense Witness Delores Brown –
Direct Examination By Mr. MacDougall]

[5] Q AND 203 CALIFORNIA STREET IS AN APARTMENT?

A YES, IT IS.

Q DOES IT FACE ON CALIFORNIA STREET?

A YES.

Q I'D LIKE TO TAKE YOU BACK TO DECEMBER OF 1989, THE NIGHT OF DECEMBER THIRTIETH, GOING INTO THE THIRTY-FIRST. DO YOU REMEMBER THAT NIGHT?

A YES SIR.

Q WHAT WERE YOU DOING THAT NIGHT?

A WELL, THAT NIGHT, OR LATE THAT MORNING I GOT UP TO GO TO THE BATHROOM. WHEN I GOT UP I LOOK OUT THE WINDOW AND I SEE A YOUNG MAN WALKING DOWN THE STREET.

Q YOU WERE HOME THAT NIGHT?

A YES, I WAS.

Q WHO WAS HOME WITH YOU?

A MY LITTLE GIRL.

Q AND WHAT TIME DID YOU WAKE UP THE MORNING OF THE THIRTY-FIRST?

A IT WAS ABOUT FOUR OR FIVE O'CLOCK IN THE MORNING.

Q CAN YOU BE ANY MORE SPECIFIC?

A NO, I CAN'T BE ANY MORE SPECIFIC.

Q IS THAT THE CUSTOMARY TIME THAT YOU WAKE UP IN THE MORNING?

A SOMETIMES.

[6] Q DID YOU LOOK OUT THE WINDOW IN THE COURSE OF GETTING UP?

A I DID LOOK OUT THE WINDOW.

Q AND WHAT DID YOU SEE?

A I SEE A YOUNG MAN WALKING DOWN THE STREET, CALIFORNIA STREET.

Q DID YOU RECOGNIZE THE YOUNG MAN?

A UH-HUH.

Q WHO WAS HE?

A JIMMY, JIMMY WHITE.

Q HOW DID YOU KNOW IT WAS JIMMY WHITE?

A BY HIS WALK, THE WAY HE WALK, AND I KNOW JIMMY.

Q HOW LONG HAD YOU KNOWN JIMMY?

A OH, ABOUT TEN OR THIRTEEN YEARS.

Q AND IN WHAT WAY DID YOU KNOW HIM, WAS HE A FRIEND OR . . . ?

A WHERE I STAY HE USED TO COME BY, YOU KNOW, AND TALK TO US, STUFF LIKE THAT. HE USED TO COME BY.

Q AND VISIT YOUR FAMILY AT HOME?

A NOT MY FAMILY. HE WOULD JUST STOP AND TALK TO US A LOT. HE WOULD SEE ME AND STOP TO TALK.

Q NOW, DID YOU KNOW MARY STEWART?

A I KNEW OF MRS. STEWART, BUT I DIDN'T KNOW MRS. STEWART.

Q DID YOU KNOW WHERE MRS. STEWART LIVED?

[7] A YES SIR.

Q NOW, YOU'RE AT 203 CALIFORNIA STREET?

A YES SIR.

Q AND IT'S BETWEEN FOUR AND FIVE O'CLOCK IN THE MORNING. YOU LOOK OUT, AND I BELIEVE YOUR TESTIMONY WAS THAT YOU SAW JIMMY WHITE WALKING DOWN CALIFORNIA STREET?

A YEAH, DOWN CALIFORNIA STREET.

Q DID YOU KNOW WHERE MARY STEWART LIVED?

A YES SIR.

Q WAS HE WALKING TOWARD OR AWAY FROM WHERE MRS. STEWART LIVED?

A WELL, SHE STAY . . . JIMMY WALKING DOWN CALIFORNIA STREET.

Q HE'S WALKING DOWN CALIFORNIA STREET. IS THAT TOWARD MRS. STEWART'S HOUSE?

A TOWARD MRS. STEWART'S, BUT, YOU KNOW, WHICH WAY HE WENT, I DON'T KNOW, I CAN'T SAY.

Q YOU COULDN'T SEE WHERE HE WENT?

A HUH-UH, NO.

Q DID YOU SEE ANYONE ELSE THAT MORNING AFTER YOU GOT UP?

A NO, NOBODY.

Q AND WERE YOU VISITED LATER THAT DAY BY A POLICE OFFICER?

A THAT MORNING I WAS, YOU KNOW, POLICES CAME BY THAT [8] MORNING.

Q DO YOU REMEMBER ABOUT WHAT TIME?

A HUH-UH, I DON'T KNOW WHAT TIME HE CAME BY.

Q DO YOU REMEMBER THE OFFICER'S NAME OR WHAT HE LOOKED LIKE?

A I DON'T REMEMBER BECAUSE SOME OF THEM MIGHT BE DONE COME, AND I DON'T REMEMBER WHO IT WAS.

Q WHAT DID THE POLICE OFFICER ASK YOU?

A THEY ASK ME DID I SEE ANYTHING THAT MORNING AND I TOLD THEM I SEE A YOUNG MAN WALKING DOWN THE STREET THAT MORNING.

Q DID YOU TELL THEM WHO THE YOUNG MAN WAS?

A UH-HUH, I TOLD THEM IT WAS JIMMY WHITE.

Q DID THE OFFICER SAY ANYTHING?

A HE DIDN'T SAY ANYTHING ELSE.

Q WAS HE MAKING NOTES WHILE HE TALKING TO YOU?

A HUH-UH.

Q I'M SORRY?

A NO, HE WASN'T DOING NOTHING. HE WAS JUST ASKING QUESTIONS AND I JUST TOLD HIM WHAT I KNOW AND THAT WAS IT.

* * *

[26] Q FROM THE TIME THE POLICE OFFICER CAME IN THE MORNING AFTER MRS. STEWART WAS ATTACKED IN 1989, YOU TESTIFIED THAT HE TOOK NO NOTES, DID HE EVER COME BACK?

A NO, NEVER DID.

Q AND BETWEEN THE TIME THAT THE POLICE OFFICER CAME ON DECEMBER 31, 1989 AND TWO OR THREE WEEKS AGO, DID ANYONE FROM THE YORK COUNTY POLICE CONTACT YOU ABOUT WHAT YOU SAW AT ALL?

A NO, HUH-UH.

* * *

[Defense Witness John Dixon –
Direct Examination By Mr. MacDougall]

[30] Q DID YOU, WHILE YOU WERE AT YORK COUNTY DETENTION CENTER, HAVE CONTACT WITH AN INDIVIDUAL BY THE NAME OF JIMMY WHITE?

A YES SIR.

Q HOW DID YOU KNOW JIMMY WHITE?

A I KNEW HIM BEFORE WHEN I WAS COMING TO DO TIME IN THE YORK COUNTY DETENTION CENTER. BUT KNOWING OF HIM, I DID; BUT KNOWING HIM, I DIDN'T.

Q DID YOU GROW UP WITH HIM?

A NO SIR.

Q YOU SAID YOU KNEW HIM BEFORE COMING TO THE DETENTION CENTER?

A I KNEW HIM PRIOR TO THE YORK COUNTY DETENTION CENTER.

Q WERE YOU PRESENT AT ANY TIME WHEN ANY OTHER INMATES DISCUSSED WITH MR. WHITE THE ATTACK AND THE SUBSEQUENT DEATH OF MARY STEWART?

A YEAH, THOMAS WALKER, THOMAS MURRAY AND THE OTHER GUY I DON'T RECALL.

Q SO, PRESENT WHEN THIS CONVERSATION TOOK PLACE WAS JIMMY WHITE, THOMAS WALKER, MR. MURRAY AND YOURSELF?

A YEAH.

Q WHERE DID THE CONVERSATION TAKE PLACE?

[31] A WE WAS PLAYING CARDS WHERE THE CONVERSATION TOOK PLACE AT THE COUNTY; I MEAN, AT THE PRISON FARM. WE WAS PLAYING CARDS AND THOMAS MURRAY ASKED JIMMY WHITE, BEING THAT BOBBY ALREADY GOT THE TIME FOR IT, WHY DON'T YOU GO ON AHEAD AND 'FESS UP TO IT. AND HE SAY WHAT'S DONE IS ALREADY DONE. AND HE SAID IT IN THAT EXACT WORDS.

Q HE SAID IT IN THOSE EXACT WORDS?

A YEAH.

Q DID HE SAY ANYTHING ELSE ABOUT IT?

A NO.

Q DID MR. MURRAY OR MR. WALKER DISCUSS IT WITH HIM FURTHER WHILE YOU WERE THERE?

A I DON'T KNOW.

Q DID YOU EVER TALK TO MR. WHITE?

A NO.

Q MR. DIXON, IN MAY OF THIS YEAR ABOUT THREE MONTHS AGO, DO YOU RECALL SIGNING AN AFFIDAVIT IN CONNECTION WITH THIS CASE?

A YES SIR.

MR. MacDOUGALL: MAY I APPROACH, YOUR HONOR?

THE COURT: CERTAINLY.

Q I'LL ASK YOU TO HAVE A LOOK AT THAT, PLEASE, AND TELL ME IF THAT AFFIDAVIT BEARS YOUR SIGNATURE?

A YEAH.

Q DID YOU SIGN THE AFFIDAVIT THAT DAY?

[32] A YES SIR.

Q DID YOU SIGN IT IN THE FORM IT'S IN?

A YES SIR.

Q WOULD YOU READ THE SECOND PARAGRAPH OF THAT AFFIDAVIT, PLEASE?

A WHAT IT SAY, I SERVED ON THE CHAIN GANG IN YORK COUNTY IN 1992 WITH JIMMY WHITE. DURING THIS TIME I HEARD A INMATE ASK MR. WHITE WHY HE WOULD NOT ADMIT TO THE CRIME THAT BOBBY LEE HOLMES WAS ON DEATH ROW FOR. JIMMY WHITE RESPONDED THAT IT'S ALL OVER AND DONE WITH IT AND BOBBY LEE HOLMES IS GOING TO DO THE TIME FOR IT.

THE COURT: WHAT'S THE DATE OF THAT?

A MAY 8.

THE COURT: THANK YOU. WAS THAT INCLUDED?

MR. POPE: I DON'T HAVE A COPY OF THAT.

THE COURT: I DON'T EITHER.

MR. MacDOUGALL: I'LL HAND ONE UP. I'M SORRY. I'LL SHOW THIS TO THE SOLICITOR.

Q NOW, THE AFFIDAVIT THAT YOU JUST READ FROM, WE'RE GOING TO MARK AS AN EXHIBIT IN JUST A MOMENT, YOU STATED THAT JIMMY WHITE RESPONDED THAT "IT WAS ALL OVER AND DONE WITH AND HE, BOBBY LEE HOLMES, IS GOING TO DO THE TIME FOR IT." IS THAT A CORRECT STATEMENT? IN YOUR AFFIDAVIT THAT STATEMENT IS CORRECT?

A YES SIR.

* * *

STATE OF SOUTH CAROLINA)
) COURT OF
COUNTY OF YORK) GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
)
-V-) TRANSCRIPT OF RECORD
) 90-GS-46-1196-1197
BOBBY LEE HOLMES,)

AUGUST 21, 2000
YORK, SOUTH CAROLINA

BEFORE:

HONORABLE JOHN C. HAYES, III

APPEARANCES:

TOMMY POPE, SOLICITOR
WILLIE THOMPSON, ASSISTANT SOLICITOR
1675 1-A YORK HIGHWAY
YORK, SC 29745
ATTORNEY FOR STATE

JAMES M. MORTON, ESQUIRE
1601 RICHLAND STREET
COLUMBIA, SC 29201

WILLIAM NETTLES, ESQUIRE
914 RICHLAND STREET SUITE A-102
COLUMBIA, SC 29201
ATTORNEYS FOR THE DEFENDANT

* * *

[Defense Witness Thomas Murray – Direct]

[22] Q OKAY. MR. MURRAY, I'M GOING TO CUT TO THE CHASE HERE, IN 1992, WERE YOU ON THE CRAIN GANG HERE IN YORK COUNTY?

A YES, SIR.

Q AND AT THAT TIME WHO WAS, WAS JIMMY WHITE, AN INDIVIDUAL BY THE NAME OF JIMMY WHITE ON THE CHAIN GANG WITH YOU?

A YES, SIR.

Q AND DO YOU REMEMBER JIMMY WHITE MAKING ANY COMMENTS ABOUT WHETHER BOBBY LEE HOLMES IS THE PERSON WHO BEAT UP AND RAPED AND OLD LADY?

A YES, SIR.

Q DO YOU REMEMBER JIMMY WHITE COMMENTING ABOUT WHETHER HE IS THE PERSON WHO ACTUALLY COMMITTED THE CRIME THAT BOBBY LEE HOLMES CHARGED WITH?

A WELL, YOU KNOW HE DIDN'T ACTUALLY SAY. HE WAS JUST SAYING HE KNEW THAT BOBBY WAS INNOCENT THAT THEY COULDN'T BRING HIM TO COURT FOR IT.

[23] Q SO LET'S TALK ABOUT THAT STATEMENT THEN. THE STATEMENT HE MADE WAS, SAY THAT WHAT, DID YOU HEAR TEES FROM HIS MOUTH?

A YES, SIR.

Q DID YOU HEAR THOSE WORDS?

A YES, SIR.

Q TELL US WHAT YOU HEARD HIS MOUTH?

A I JUST HEARD HIM WHEN HE SAY LIKE HE KNEW THAT BOBBY WAS INNOCENT AND HOW THEY COULDN'T BRING HIM TO COURT FOR IT.

Q NOW TELL US A LITTLE BIT ABOUT WHERE IT WAS YOU HEARD THAT?

A AT THE OLD YORK COUNTY PRISON CAMP.

Q AND WHERE AT THE OLD YORK COUNTY PRISON CAMP?

A THEY HAD LIKE TABLES LINED UP WHERE WE USED TO PLAY CARDS AT IN THE HALL BETWEEN BEDS.

Q SO SORT OF LIKE A TIME OBVIOUSLY WHEN YOU WEREN'T WORKING ON THE CHAIN GANG?

A YES, WE'D BE OFF WORK.

Q OKAY. AND SO WERE YOU SITTING AT THE TABLE WITH JIMMY WHITE WHEN HE SAID THAT?

A NO, SEE JIMMY NEVER DEALT WITH US. HE WOULD ALWAYS SEEMED TO BE WITH OTHER PEOPLE.

Q WHY WOULD HE NEVER DEAL WITH YOU?

A SEE A LOT OF THE BOYS WANTED TO JUMP ON HIM.

[25] Q AND WAS MR. JIMMY WHITE WITH YOU AT THAT TIME AS WELL?

A ME AND HIM STAYED ON THE SAME SIDE IN THE SAME DORM.

Q AT THAT TIME DID YOU EVER HEAR JIMMY WHITE MAKE ADMISSIONS ABOUT HIS INVOLVEMENT IN A CRIME THAT BOBBY LEE HOLMES HAD BEEN CONVICTED FOR?

A HE JUST SAID AGAIN THAT HE KNEW THE MAN DIDN'T DO IT AND THEY COULD NOT BRING HIM BACK TO COURT FOR IT.

* * *

[Defense Witness Thomas Murray –
Cross By Mr. Pope]

[33] Q OKAY. SO THE ONLY THING AT THE CHAIN GANG IS THAT HE SAID THAT BOBBY WAS INNOCENT, IS THAT CORRECT?

A AND HOW HE KNEW THAT THEY COULDN'T BRING HIM TO COURT FOR IT.

Q COULDN'T BRING JIMMY WHITE TO COURT FOR IT?

A YEAH.

Q BOBBY WAS INNOCENT AND THEY COULDN'T BRING JIMMY WHITE TO COURT FOR IT.

A YES.

Q OKAY. SO WHEN YOU SAID THAT I HEARD A WITNESS JIMMY WHITE ADMIT TO THE CRIME THAT BOBBY LEE HOLMES IS ACCUSED OF THAT IS NOT CORRECT, IS IT?

A I DIDN'T NEVER SAY HE ADMITTED TO ME THAT HE DID IT. I DIDN'T SAY THAT.

Q THE GENERAL STATEMENT HE MADE YOU JUST READ INTO IT BASED ON WHAT YOU WERE HEARING AND WHAT YOU KNEW THEY WERE TALKING ABOUT?

A YEAH.

Q OKAY. SO ADMITTING TO THE CRIME, THIS LANGUAGE HERE THAT'S NOT EXACTLY WHAT YOU ARE SAYING?

A NO.

* * *

[34] Q JIMMY WHITE WAS BRAGGING TO RED?

A THAT'S RIGHT.

Q NOW DID YOU HEAR HIM BRAGGING TO RED?

A YES, I DID.

Q YOU SAY, OH, CALVIN CAME AND GOT YOU –

[35] A THAT'S RIGHT –

Q AND THEN YOU WENT AND HEARD HIM BRAGGING?

A YEAH, WE WENT DOWN THERE.

Q Y'ALL WENT DOWN THERE AND WHAT DID YOU HEAR?

A JUST WHAT HE SAID THE MAN WAS IN JAIL FOR NOTHING.

Q OKAY. BASICALLY THE SAME KIND OF THING?

A AND THEY COULD NOT BRING HIM BACK TO COURT FOR IT.

Q YOU NEVER HEARD JIMMY WHITE SAY I KILLED THAT WOMAN OR I RAPED THAT WOMAN?

A NO.

THE COURT: I DIDN'T HEAR THE ANSWER TO THAT.

A NO, SIR.

Q YOU SAID NO, OKAY. ALL RIGHT. YOU SAY KNOWLEDGE OF JIMMY WHITE COMMITTING THE CRIME, I'M JUST READING FROM YOUR AFFIDAVIT. I GOT A COPY IF YOU NEED TO TAKE A LOOK AT IT. I'M JUST READING NUMBER THREE. SAID KNOWLEDGE OF JIMMY WHITE COMMITTING THE CRIME WAS WIDESPREAD AND PUT HIM DANGER WITH OTHER ROCK HILL INMATES?

A I DIDN'T SAY NOTHING LIKE THAT.

Q YOU DIDN'T. YOU DIDN'T SAY NUMBER THREE?

A NOPE.

* * *

[36] Q OKAY. WHAT ABOUT NUMBER FOUR. IF YOU'D TAKE A LOOK AT THAT ONE. I BELIEVE JIMMY WHITE WAS FRAMED. JIMMY WHITE FRAMED BOBBY LEE HOLMES FOR CRIMES IN

RETRIBUTION FOR A DISPUTE HE AND HOLMES HAD IN YORK?

A I DIDN'T SAY NONE OF THAT BECAUSE I DON'T KNOW NOTHING ABOUT NOTHING WENT ON IN NO YORK.

Q YOU DON'T KNOW, YOU JUST KNEW HIM FROM BEING INSIDE?

A THAT'S RIGHT.

Q WHAT ABOUT I ALSO BELIEVE THAT BOBBY LEE HOLMES WAS ALSO INVOLVED IN A FIGHT WHEN THIS WAS COMMITTED?

A NO, THAT'S WHAT THEY SAY JIMMY SAID THAT, THAT BOBBY, SOMEHOW BOBBY SUPPOSED TO BEEN ON THE OTHER SIDE OF TOWN INVOLVED IN ANOTHER FIGHT OVER THERE WHEN HE WAS TELLING THE BOYS.

Q OKAY. THAT'S WHAT SOMEBODY ELSE SAID?

A NO, JIMMY SAID THAT.

[37] Q OKAY. SO THAT'S WHAT HE SAID BUT WHEN IT SAYS TALKING –

A THAT'S WHEN HE WAS SAYING HOW HE KNEW BOBBY WAS INNOCENT.

Q I GOT YOU. WHEN HE WAS TALKING BECAUSE HE HEARD HE HAD BEEN IN A FIGHT ON THE OTHER SIDE OF TOWN?

A YEAH.

Q WHAT DID YOU UNDERSTAND JIMMY SAYING, THAT HE WAS IN A FIGHT WITH BOBBY ON THE OTHER SIDE OF TOWN?

A NO, SIR.

Q OKAY. ALSO BELIEVED BOBBY HOLMES WAS ACROSS YORK. AS FAR AS YOU BELIEVE YOU DON'T KNOW NOTHING ABOUT THE YORK DEAL ONE WAY OR ANOTHER?

A NO, I DON'T KNOW NOTHING ABOUT YORK. I WASN'T IN NO YORK.

Q I GOT YOU. SO AS FAR AS NUMBER FOUR BEING SOMETHING THOMAS MURRAY BELIEVES, THAT'S NOT REALLY RIGHT, IS THAT RIGHT?

A NO.

* * *

[44] A AND HE WAS ASKING ABOUT SOME WOMAN. I TOLD HIM I NEVER SEEN NO WOMAN AND THAT'S ALL THAT WAS.

Q SO THE WOMAN THAT SIGNED NOTORIZED THAT SIGNATURE, THERE WASN'T A WOMAN THERE WHO NOTORIZED YOUR SIGNATURE ON THAT?

A NO, LIKE I TOLD HIM, I NEVER SEEN A WOMAN.

Q OKAY. DID YOU TELL HIM THAT THE STATEMENT ON THE AFFIDAVIT SAYING YOU OVERHEARD JIMMY WHITE ADMIT THAT HE COMMITTED THE CRIME AND NOT BOBBY HOLMES IS FALSE?

[45] A I DID NOT SAY I HEARD HIM ADMIT THAT HE DID IT.

Q I SEE THE DIFFERENCE OF WHAT YOU ARE SAYING.

A THAT'S WHAT I WAS TRYING TO GET HIM TO UNDERSTAND THAT DAY.

Q THAT'S WHAT THIS MAN NEEDS TO UNDERSTAND AND I'VE ASKED YOU THAT ABOUT FIVE TIMES.

A HE WAS JUST SAYING THAT HE KNEW BOBBY WAS INNOCENT. HE NEVER SAID THAT HE DID IT, NO.

Q GOT YOU. AND EVERYBODY HAS ASKED YOU QUESTIONS 20 DIFFERENT WAYS AND THAT'S WHAT YOU'VE BEEN TRYING TO TELL US?

A THAT'S RIGHT.

Q MR. MURRAY, I APPRECIATE IT. THANK YOU, SIR.

MR. NETTLES: ONE BRIEF THING, YOUR HONOR.

REDIRECT EXAMINATION BY MR. NETTLES:

Q MR. MURRAY, ON NUMBER THREE HERE, YOU SEE NUMBER THREE THERE. DO YOU REMEMBER TESTIFYING THERE WAS SOME PEOPLE THAT WANTED TO BEAT UP JIMMY WHITE WHENEVER YOU AND I WERE TALKING?

A YEAH, THAT'S WHAT I WAS SAYING. YOU KNOW, A LOT OF PEOPLE WANTED TO JUMP ON HIM.

* * *

[Defense Witness Mattie Scott – Direct]

[49] Q TELL US ABOUT WHEN DID YOU FIRST MEET JIMMY WHITE?

A OH, IT WAS IN OCTOBER OF 1997.

Q OKAY.

A HE CAME TO MY SONS HOUSE WITH A FRIEND OF HIS.

Q AND IT WAS AT YOUR SON'S HOUSE. WERE YOU AT YOUR SON'S HOUSE?

A YES.

Q AND HE CAME WITH A FRIEND OF HIS, DO YOU KNOW WHO THE FRIEND?

A BOBBY PATTERSON.

[50] Q BOBBY PATTERSON.

A UH-HUH. THEY WERE WORKING TOGETHER.

Q THEY WERE WORKING TOGETHER?

A AND HE CAME TO MY SON'S HOUSE WITH BOBBY.

Q OKAY. WHAT WAS GOING ON AT YOUR SON'S HOUSE?

A THEY WERE JUST HAVING LIKE A LITTLE GET TOGETHER, PLAYING CARDS, SITTING AROUND TALKING, DRINKING.

Q AND DO YOU REMEMBER, WERE YOU ABLE TO TELL US ABOUT WHAT JIMMY WHITE'S CONDITION WAS AT THE TIME HE GOT TO YOUR SON'S HOUSE?

A HE WAS, HE WAS PARTIALLY INTOXICATED.

Q OKAY. WAS HE FALLING DOWN, CRAWLING AROUND THE STREET DRUNK?

A NO.

Q DID ANYBODY AT THAT TIME IN YOUR PRESENCE, DID ANYONE EVER QUESTION HIM ABOUT HIS INVOLVEMENT IN THE MURDER?

A YES, THEY STARTED TALKING ABOUT THAT HE HAD KILLED, RAPED AND KILLED THE OLD LADY IN YORK.

Q WERE THEY DOING THAT IN HIS PRESENCE?

A YEAH, HE WAS TALKING TO THEM, TALKING WITH THEM.

Q DID, DID HE EVER DIRECTLY SAY ANYTHING ABOUT HIS INVOLVEMENT IN THAT CRIME?

A HE SAID, YES, I DID IT BUT HOLMES IS GOING TO [51] FRY FOR IT.

Q I'M SORRY. NOW I WANT TO BE CLEAR NOW. OUT OF JIMMY WHITE'S MOUTH YOU HEARD –

A YES.

Q – HIM SAY WHAT?

A HE SAID, YES, I DID IT BUT HOLMES IS GOING TO FRY FOR IT.

Q FRY FOR THIS –

A – RAPING AND KILLING THE OLD LADY.

Q THEY WERE TALKING ABOUT. NOW AT THAT TIME WHAT DID YOU DO AFTER YOU HEARD THAT?

A WELL, SEE I WASN'T EVEN REALLY SITTING THE LIVING ROOM. I JUST COME OUT OF THE LIVING ROOM THEN I WENT BACK IN MY BEDROOM AND LAID DOWN.

Q LET ME GET THIS STRAIGHT, YOU SAID YOU WERE IN YOUR BEDROOM AND YOU CAME OUT?

A YES. I WENT IN, SEE, I HAD GOT OFF WORK. I CAME HOME, CHANGED CLOTHES, AND THEN I CAME BACK OUT IN THE LIVING ROOM WHERE THEY WAS.

Q NOW WHENEVER THIS STATEMENT WAS MADE BY JIMMY WHITE, WERE YOU IN THE LIVING ROOM?

A I WAS IN THE LIVING ROOM THEN.

Q AND YOU SAW HIM SAY THAT?

A YES.

* * *

[56] Q OKAY. AND THEY GOT INTOXICATED AND YOU SAID THEY STARTED TALKING ABOUT JIMMY RAPING AND KILLING AN OLD LADY, IS THAT RIGHT?

A YES.

Q WHO IS "THEY"?

A IT WAS ABOUT, BOBBY PATTERSON WAS THERE, IT WAS BOBBY PATTERSON, REGGY GILL.

Q I'M SORRY GILL OR HILL?

A GILL.

Q OKAY.

A WHO ELSE WAS IT. EDDIE WOODS.

Q OKAY.

A AND IT WAS TWO OTHER, BOBBY PATTERSON'S GIRLFRIEND WAS THERE.

Q DO YOU KNOW WHO SHE IS?

A I DON'T KNOW HER NAME. I KNOW HER NAME IS SHELL. BUT I DON'T KNOW HER LAST NAME.

Q SHELL? S-H-E-L-L?

A UH-HUH. BUT I DON'T KNOW HER LAST NAME.

Q JIMMY WHITE COMES THERE AT JAMES' HOUSE AND HE'S PARTIALLY INTOXICATED AND EVERYBODY STARTS TALKING ABOUT RAPING AND KILLING?

A YEAH, AFTER THEY SITTING AROUND TALKING, DRINKING AND TALKING, THEY STARTED TALKING ABOUT IT.

A YEAH. IT WASN'T NO JUST ME AND JUNIOR WENT BACK HOME. MICHAEL WAS WITH US.

Q SO, YOUR TESTIMONY IS THAT JUNIOR LITTLE DROVE YOU HOME?

A YEAH.

* * *

[Defense Witness Ken Rhodes – Direct]

[63] Q DO YOU KNOW MR. JIMMY WHITE?

A YES, SIR, I'VE KNOWN HIM MOST OF MY LIFE.

Q OKAY. HOW WAS THAT?

A WELL, JUST HANGING OUT IN THE NEIGHBORHOOD.

Q OKAY. DID YOU RELATE TO ME AN INCIDENT ON MCCLAIN STREET SEVERAL YEARS AGO WHERE MR. WHITE MADE SOME STATEMENTS?

A YES SIR.

Q AND TELL THE COURT ABOUT THAT IF YOU WILL?

A WELL, LIKE I WAS SAYING JIMMY WHITE, YOU KNOW, HE THOUGHT ME AND HIM WAS LIKE

BROTHERS, SOMETHING ABOUT HIS DADDY CHARLIE SOMETHING LIKE [64] THAT, AND HE CONFIDED IN ME A LOT.

Q HE THOUGHT YOU WERE –

A A BROTHER.

Q AN ACTUAL BLOOD BROTHERS?

A RIGHT.

Q AND HOW, WHY DID HE THINK THAT AND WHAT DID HE TELL YOU ABOUT THAT?

A WELL, HE TOLD ME THAT, IN OTHER WORDS, I WAS TOO SMALL TO REMEMBER THAT HIS DADDY USED TO DATE MY MOM AND YOU KNOW THAT THEY WAS LIKE BROTHERS AND I TOLD HIM, AIN'T NO WAY POSSIBLE WE COULD BE BROTHERS, THAT MY DADDY'S NAME WAS WILLIAM HENRY HALL, YOU KNOW, AND WE SAT OUT IN THE YARD AND WE TALKED. WE WAS OVER AT SOME BENEFIELD'S HOME ON MCCLAIN STREET. I STAYED NEXT DOOR TO THEM.

Q WHEN WAS THIS?

A THIS WAS BACK IN '92.

Q DO YOU REMEMBER ABOUT WHAT MONTH IN '92?

A IT WAS AROUND THE FIRST OF THE YEAR. AROUND MARCH I THINK, I'M NOT SURE WHICH, IT'S BEEN AWHILE.

Q SO THIS WAS AT A HOUSE OVER ON MCCLAIN STREET.

A YES, SIR.

Q AND Y'ALL WERE BOTH THERE?

A RIGHT.

[65] Q OKAY. GO AHEAD.

A AND THEY WAS OUT DRINKING SOME VODKA.

Q WHO IS "THEY"? DO YOU REMEMBER WHO ALL?

A I THINK HIS NAME WAS WIRE HEAD BENEFIELD AND HE USED TO COME OVER THERE A LOT.

Q OKAY.

A AND I WAS WALKING UP THE STREET AND HE SAW ME AND HE CALLED ME OVER I WENT OVER AND WE TALKED AND ALL OF A SUDDEN, YOU KNOW, I JUST ASKED HIM, I SAID, JIMMY, A LOT PEOPLE RUNNING AROUND SAYING THAT YOU HAD SOMETHING TO DO WITH THIS LADY'S DEATH.

* * *

[66] Q EXCUSE ME FOR INTERRUPTING. GO AHEAD AND TELL ABOUT JIMMY WHITE CONFIDING WITH YOU THAT DAY AND WHAT HE SAID?

A WELL, I JUST ASKED HIM I SAID, WELL, JIMMY, YOU KNOW WORD IS ON THE STREET THAT YOU HAD SOMETHING TO DO WITH THIS LADY FROM CALIFORNIA STREET'S DEATH AND, YOU KNOW, HE PUT HIS HEAD DOWN AND HE RAISED HIS HEAD BACK UP AND HE SAID, WELL, YOU KNOW I LIKE OLDER WOMEN. AND I ASKED HIM

WHAT DID HE MEAN BY THAT, YOU KNOW, BECAUSE AT THE TIME I WAS DATING A WOMAN THAT WAS OUT THERE IN THE STREETS TOO, SO I DIDN'T, I ASKED HIM THAT BECAUSE I DIDN'T WANT HIM COMING AROUND HER AND HE NEVER CALLED THE LADY'S NAME BUT YOU KNOW HE SAY THAT HE LIKED OLD WOMEN AND THAT YEAH HE DID WHAT THEY SAY HE DID AND YOU KNOW THAT SOMEBODY ELSE WAS LOCKED UP FOR IT. AND YOU KNOW IT'S LIKE HE DIDN'T HAVE NO REGRETS ABOUT IT AT ALL.

[67] Q WHAT DID HE SAY HE DID?

A WELL HE TOLD, THE ONLY THING HE TOLD, HE DIDN'T SAY EXACTLY WHAT HE DONE, HE JUST TOLD ME THAT SHE HAD SOME GOOD STUFF.

Q THAT SHE HAD SOME GOOD STUFF?

A RIGHT.

Q AND WHO WAS HE TALKING ABOUT?

A IT WAS THE OLD LADY THAT SHE DIED.

Q OKAY. DID HE SAY THAT HE HAD RAPED HER OR KILLED HER OR ANYTHING, WHAT DID HE SAY?

A NO, HE TOLD ME THAT THE LADY YOU KNOW FOUND OUT THAT SHE HAD DIED. HE SAID THAT HE DIDN'T KILL THE LADY. THE LADY WAS ALIVE WHEN HE LEFT BECAUSE WHEN HE, WE USED TO HANG OUT AT THE NIGHT SPOT CALLED CLYDE'S AND WHEN HE'D GET TOO DRUNK TO GO HOME HE WOULD GO BY AND SPEND THE NIGHT OVER AT HER HOUSE OR SOME OTHER LADY'S

HOUSE THAT HE KNOWED, YOU KNOW. HE WOULD STAY IN YORK. HE WAS FROM SHARON.

Q HE WOULD GO OVER TO THE OLD LADY'S HOUSE AND STAY OVER THERE?

A I'VE KNOWN HIM TO GO OVER THAT WAY MAYBE TWO OR THREE TIMES.

Q AND WHERE IS THIS?

A OVER ON CALIFORNIA STREET APARTMENTS.

[68] Q TO STAY WITH AN OLD LADY OVER THERE?

A RIGHT. I DON'T KNOW WHO THE OLD LADY WAS, YOU KNOW. LIKE I SAY, WE MET UP AT THE CLUB.

Q OKAY. AND WHY DO YOU BELIEVE HE WAS CONFIDING IN YOU AT THIS POINT?

A WELL, LIKE I SAY HE THOUGHT, I GUESS HE FELT THE CLOSENESS THINKING THAT WE WAS BROTHERS, YOU KNOW.

Q HOW DID YOU REACT, KEN, WHEN HE TOLD YOU THIS?

A WELL, WHAT DID WAS I LEFT, YOU KNOW, BECAUSE A LOT OF PEOPLES IN YORK FEAR HIM BECAUSE OF THE WAY HE ACTUALLY IS, YOU KNOW.

Q HOW IS THAT?

A HE WAS REAL VIOLENT. HE WAS A VIOLENT PERSON.

Q OKAY.

A HE'S THE TYPE OF PERSON THAT HE JUST DIDN'T CARE.

Q HOW DID YOU FEEL WHEN HE TOLD YOU THAT, HOW DID YOU REACT?

A I LEFT. I WENT HOME AND SHORTLY AFTER THAT I MOVED BACK IN WITH MY MOM, LET THE HOUSE GO ON MCCLAIN STREET I WAS IN LIVING IN WAS OWNED BY MANNY BIGGERS AT FAITH REALITY AND I MOVED OUT OF THE HOUSE AND WENT BACK TO LIVE WITH MY MOM JUST SO HE COULDN'T FIND ME AGAIN BECAUSE IT [69] SEEM LIKE EVERY HOUSE THAT I WENT TO HE WOULD POP UP.

Q NOW KEN, YOU'VE BEEN CHARGED I THINK WITH AGGRAVATED ASSAULT, BURGLARY, AND GRAND LARCENY BEFORE, IS THAT RIGHT?

A THEY HAD ME CHARGED WITH ASSAULT AND BATTERY WITH INTENT TO KILL, GRAND LARCENY, ESCAPE, AND SECOND DEGREE BURGLARY.

Q AND YOU SERVED WHAT FIVE YEARS FOR THAT?

A FIVE YEARS AND ABOUT SEVEN MONTHS.

Q OKAY. NOW YOU'VE KNOWN JIMMY YOU SAY ALL YOUR LIFE?

A I'VE KNOWN HIM PARTICULARLY ALL MY LIFE.

Q ANY QUESTION IN YOUR MIND THAT HE WAS THE PERSON WHO WAS TELLING YOU THIS?

A HE WAS THE PERSON THAT WAS TELLING ME.

Q ANY QUESTION IN YOUR MIND THAT WHAT YOU TOLD ME HERE TOLD WAS HAPPENED OUT THERE THAT DAY IN 1992?

A WHAT DO YOU MEAN BY THAT?

Q I MEAN THERE IS NO QUESTION HE TOLD YOU THAT WHAT YOU TOLD THIS COURT?

A YES, HE DID.

Q DID HE SAY ANYTHING ABOUT MER. HOLMES? I MEAN, I KNOW THAT YOU SAID THAT JIMMY WHITE SAID THAT HE [70] WENT IN THE LADY'S HOUSE, HE DIDN'T KILL HER, DID HE SAY THAT BOBBY LEE HOLMES WAS DOING TIME FOR SOMETHING HE SHOULDN'T BE DOING OR ANYTHING TO THAT EFFECT?

A THE ONLY THING HE SAID ABOUT BOBBY WAS THE BOY DOING TIME FOR SOMETHING THAT HE DIDN'T REALLY DO AND I DON'T KNOW HOW TRUE IT WAS. HE SAY THAT HE TRIED TO LET SOMEONE KNOW THAT HE WAS THE ONE THAT DID IT AND I TOLD HIM, I SAY, WELL, JIMMY YOU KNOW YOU ARE LYING BECAUSE THEM POLICE OFFICERS UP THERE IN YORK, YOU TELL THEM, YOU GO UP

THERE AND TELL THEM PEOPLE THAT YOU ACTUALLY DID THIS THEY ARE GOING TO LOCK YOU UP FOR QUESTIONING, YOU KNOW, AND I LEFT IT AT THAT.

* * *

[Ken Rhodes – Cross]

[80] Q OKAY. SO YOU TALKED THAT ONE DAY IN MARCH OF '92, ALL THIS TOOK PLACE, IS THAT RIGHT?

A YEAH, I TALKED TO HIM BECAUSE I WANTED TO FIND OUT IF IT WAS ANY TRUTH OF WHAT WAS AROUND OUT ON THE STREETS.

Q SO YOU'RE CURIOUS?

A YEAH, I WANTED TO KNOW BECAUSE HE COMES AROUND MY KIDS A LOT.

Q ALL RIGHT. NOW YOU KNEW BOBBY HOLMES AT THAT TIME, IS THAT RIGHT?

A I HAVE MET HIM BEFORE THEN, YEAH.

Q YOU KNEW, YOU DIDN'T KNOW HIM THAT DAY. HE WAS INCARCERATED THEN?

A RIGHT.

Q BUT YOU KNEW HIM, YOU SAID YOU MET HIM IN THE '80'S?

A YEAH, SOMEWHERE IN THE '80'S.

Q AND Y'ALL WERE DEVELOPING A GOOD FRIENDSHIP?

A WELL, I FELT LIKE WE WAS, YEAH, DEVELOPING A GOOD FRIENDSHIP.

Q WHO BROKE IT OFF WHEN HE GOT ARRESTED?

A WELL, WHEN HE GOT LOCKED UP I COULDN'T SEE HIM. I DIDN'T HAVE NO, YOU KNOW, TRANSPORTATION.

Q DID YOU USE TO RIDE WITH HIM?

A EXCUSE ME?

[81] Q YOU SAID YOU DIDN'T HAVE ANY TRANSPORTATION, OH, YOU MEAN GO DOWN THE ROAD AND SEE HIM?

A RIGHT, EXACTLY.

Q I'M WITH YOU. SO BASICALLY Y'ALL'S FRIENDSHIP ENDED, Y'ALL DIDN'T HAVE ANY FALLING OUT OR ANYTHING. YOU JUST PRETTY MUCH AFTER JANUARY OF 1990 YOU COULDN'T SEE HIM ANYMORE?

A I COULDN'T SEE HIM.

Q WAS THERE EVER A TIME WHEN YOU WENT DOWN THE ROAD THAT YOU SAW HIM ANY TIME WHILE YOU WERE DOWN THERE?

A WELL FROM MY UNDERSTANDING WHEN I WENT DOWN THE ROAD HE WAS A LIEBER ON DEATH ROW AND WE CAN'T SEE PEOPLES THAT'S ON DEATH ROW.

Q SO HE MIGHT HAVE BEEN THERE BUT YOU NEVER GOT TO SEE HIM?

A I DON'T KNOW WHERE HE WAS AT BUT I NEVER SEEN HIM WHILE I WAS INCARCERATED.

Q HOW LONG WERE YOU FRIENDS THERE BACK IN '90 BEFORE HE WENT TO JAIL?

A FOUR OR FIVE YEARS.

Q WHAT KIND OF STUFF DID Y'ALL DO TOGETHER?

A MOSTLY SHOOT BASKETBALL, RIDE AROUND BECAUSE MY OLDER SON'S MOTHER IS FROM ROCK HILL AND I USED TO COME OVER A LOT AND SEE HIM WHEN I CAME TO [82] ROCK HILL WITH HIS COUSIN FREDDY.

Q DOWN THERE WHERE HIS FAMILY WAS IN ROCK HILL, THAT'S WHERE HE, BECAUSE THE VALLEY IS WHERE HIS DADDY LIVED. DID YOU KNOW HIS DADDY OTHER AS FAR AS GALILEAN ROAD OR DOWN THAT WAY?

A I'VE MET HIM, YEAH.

Q OKAY. SO YOU KNOW HIM. DID YOU KNOW HIM AT THE TIME TOO

A HIS DADDY?

Q YES, SIR.

A I'VE KNOWN HIS DADDY SINCE I'VE BEEN IN YORK.

Q SO YOU KNEW HIS PEOPLE UP HERE BECAUSE YOU KNEW HIM SINCE YOU WERE SEEING YOUR SON'S MOTHER DOWN IN ROCK HILL AND Y'ALL HANGING OUT DOWN THERE?

A AND WHEN HE COME UP TO VISIT.

Q SO BOTH PLACES?

A YEAH.

Q OKAY. FOR ABOUT FOUR OR FIVE YEARS?

A RIGHT.

* * *

[83] Q I GOT YOU. NOW IN '92, AFTER YOU HEARD JIMMY WHITE SAY THIS IN MARCH OF '92, WHO DID YOU TELL?

A WELL, AT THAT TIME I DIDN'T TELL ANYONE, YOU KNOW, BECAUSE SEE, I'M LIKE THIS, SOMETHING LIKE THAT YOU JUST DON'T GO GOSSIPING ABOUT OUT ON THE STREET BECAUSE IT'S GOING TO PUT YOUR LIFE IN DANGER, YOU KNOW, AND I KNOW HOW THE GUY IS, JIMMY, AND I DIDN'T WANT HIM TRYING TO COME UP BEHIND ME AND HIT ME IN THE BACK WITH A STICK OR A BOTTLE OR WHAT NOT.

Q NOW WHERE WERE YOU IN '93?

A '93 I WAS SENTENCED TO CENTRAL CORRECTIONAL INSTITUTION.

Q WHEN DID YOU GO DOWN IN '93?

A I WENT DOWN I GUESS ABOUT THIS TIME '93.

Q AND KIND OF FALL OF '93 END OF SUMMER '93?

A RIGHT.

Q SO WHEN BOBBY WAS GETTING TRIED BACK AT THE BEGINNING OF '93, DO YOU REMEMBER THAT?

A I REMEMBER WHEN HE WENT TO COURT BUT I WAS IN BALTIMORE, MARYLAND, BECAUSE MY FATHER, IF YOU LOOK IT UP, HE DIED FROM AN ILLNESS.

Q YES SIR, I'M SORRY.

A AND I WENT UP THERE TO SEE HIM. I DIDN'T GO ON [84] MY OWN. ONE OF MY AUNTS TOOK ME UP THERE TO SEE HIM. WHEN I COME BACK I THINK BOBBY HAD BEEN DONE TRIED OR BEEN SENT DOWN THE ROAD.

Q OKAY. HOW LONG DID YOU STAY UP THERE?

A I STAYED UP THERE ABOUT 7-8 MONTHS.

Q WHEN YOU GOT BACK AND HOW LONG WERE YOU BACK BEFORE YOU WENT DOWN TO CCI?

A I TELL YOU THE TRUTH, I CAN'T RECALL HOW LONG I WAS BACK BECAUSE THEY CAME AND PUT ME IN THE OLD BUILDING OUT DOWN BEHIND THE MOSS JUSTICE CENTER.

Q THE OLD CHAIN, USED TO BE UP ON THE HILL?

A THE OLD WHITE BUILDING BACK THERE. HAVE A LOT OF AUCTIONS AND STUFF OUT THERE NOW.

Q RIGHT. THEY DID THAT AFTER YOU CAME BACK?

A YEAH, I SAT THERE FOR AWHILE THEN THEY TOOK AND TRIED ME IN THE OLD COURT-HOUSE UP TOWN.

Q RIGHT.

A AND I NEVER SEEN THE STREETS AGAIN UNTIL NOVEMBER 1998.

Q I GOT YOU. SO ANY TIME BACK FROM THE TIME YOU HEARD THIS IN '92 EVEN AFTER YOU GOT BACK IN '93 AND YOU HEARD BOBBY HAD BEEN SENT DOWN THE ROAD, DID YOU TELL ANYBODY ABOUT IT?

A THAT HE HAD WENT DOWN THE ROAD?

[85] Q NO, THE THING ABOUT JIMMY WHITE?

A WELL, MY WIFE, YOU KNOW, I HAD ASKED HER WHAT DID SHE THINK ABOUT IT AND SHE TOLD ME TO FOLLOW MY HEART. YOU KNOW. SHE COULDN'T TELL ME WHAT TO DO AND SHE REALLY DIDN'T WANT TO HEAR YOU KNOW ANYTHING ABOUT IT. SHE DIDN'T WANT NOTHING TO DO WITH IT, YOU KNOW, SO I DID LIKE SHE SAID. I SAT DOWN THERE AND THOUGHT ABOUT IT FOR AWHILE. WHAT CAN YOU DO WHEN YOU ARE LOCKED UP?

Q WELL, YOU COULD HAVE TOLD SOMEBODY, COULDN'T YOU?

A IT WOULDN'T HAVE DONES NO GOOD.

Q IT WOULDN'T, OKAY. NOW HOW DID YOU END UP BEING HERE TODAY?

A HERE TODAY?

Q YES, SIR.

A WELL, I GOT A CALL FROM ONE OF HIS LAWYERS.

Q UH-HUH.

A AND I AGREED TO MEET AND TALK WITH THEM.

Q WHEN WAS THIS, DO YOU RECALL?

A IT WAS ABOUT 11, WELL, I MET WITH THEM ABOUT 11 O'CLOCK.

Q TODAY IS THE FIRST TIME YOU HEARD FROM THEM?

A WELL, THEY CALLED ME AT HOME. I GUESS IT WAS ABOUT BETWEEN NINE AND TEN LAST NIGHT.

* * *

[Ken Rhodes – Redirect]

[89] Q JUST ONE OTHER THING, WHEN YOU SAY THAT JIMMY TALKED ABOUT GOING TO SEE THE OLD LADY ON CALIFORNIA STREET, HE WASN'T TALKING ABOUT, HE WAS TALKING ABOUT A LADY WHO WAS OLDER, NOT ABOUT HIS GIRLFRIEND OR ANYTHING?

A NOT ABOUT A GIRLFRIEND BECAUSE HE DIDN'T, LIKE I SAY, I NEVER KNOWN HIM TO HAVE A GIRLFRIEND BUT WHEN HE DATES SOMEONE, YOU KNOW, THAT'S JUST LIKE I MEET A WOMAN OUT ON THE STREET, WE'RE NOT GOING TOGETHER OR WHAT NOT BUT WE GOT A RELATIONSHIP OR WE

MESS AROUND EVERY NOW AND THEN OR WHAT NOT, THAT'S WHAT I'M TALKING ABOUT.

Q LET ME CLEAR UP ONE MORE THING. ABOUT KILLING THE LADY, WHAT DID HE SAY ABOUT THAT? DID HE SAY THAT HE KILLED THE OLD LADY RIGHT THEN, WHAT DID HE SAY SPECIFICALLY ABOUT THAT?

A WELL, HE TOLD ME THAT HE DID HAVE SEX WITH THE LADY. HE SAID BUT THE LADY DIDN'T DIE. SHE WASN'T DEAD WHEN HE LEFT THE HOUSE. HE SAID SOMETHING ABOUT A HOSPITAL, SHE WAS IN A HOSPITAL AND SHE CAUGHT PNEUMONIA AND DIED THEN AND NOW THAT THEY DONE PUT A MURDER RAP ON BOBBY [90] THAT HE WAS GOING TO BURN FOR SOMETHING THAT HE DIDN'T REALLY DO.

Q "HE" BEING BOBBY?

A RIGHT.

Q OKAY.

A YOU KNOW, AND THAT HE FELT THAT IT WAS WRONG FOR THEM TO FRY SOMEONE THAT REALLY DIDN'T DO IT AND I TOLD HIM, I SAID THEN, WHY DON'T YOU CONFESS.

Q WHAT DID HE SAY?

A YOU MUST BE CRAZ.. I MEAN HE SAY I WAS CRAZY YOU KNOW. WHAT ELSE COULD I SAY TO SOMEBODY LIKE THAT.

Q THANK YOU, KEN.

RECROSS EXAMINATION BY MR. POPE:

Q SO MR. RHODES, WE'RE GOING AROUND AND AROUND ABOUT WORDS I THINK. LET ME MAKE SURE. JIMMY TALKED ABOUT SEEING HIS OLD LADY OVER ON PECAN OR CALIFORNIA OR WHATEVER, YOU DON'T KNOW IF THERE IS AN OLD WOMAN OR A YOUNG WOMAN, BUT YOU KNOW JIMMY, FROM EVERYTHING YOU KNEW OR EVERYTHING YOU SAW, HE ONLY RAN WITH OLDER WOMEN?

A RIGHT, OLDER WOMEN.

* * *

STATE OF SOUTH CAROLINA COUNTY OF YORK	) IN THE COURT OF GENERAL SESSIONS SIXTEENTH JUDICIAL CIRCUIT #90-GS-46-1196, 1197, 1198, 120C
STATE OF SOUTH CAROLINA, PLAINTIFF, v. BOBBY LEE HOLMES, DEFENDANT	ORDER RE: THIRD PARTY GUILT EVIDENCE

Defendant seeks admission of evidence he claims tends to prove another guilty of the murder of Mary Stewart for which he is charged in the above set forth indictments. Defendant has presented on this issue testimony by a number of witnesses he claims bring this proffered evidence within the guidelines of the *State v. Gregory*, 198 S.C. 98, 16 S.E. 2d 532 (S. Ct. 1941).

In *Gregory* our Supreme Court established the criteria for admission of third party guilt evidence. *Gregory* sets forth this rule as follows:

> [T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a

> conjectural inference as to the commission of the crime by another, is not admissible . . . But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends to clearly point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by financiful analogy to say to the jury that someone other than he is more probably guilty. (16 S.E.2d at 534)

The defendant's witnesses establish to the Court's satisfaction that sufficient evidence exists from which a jury may conclude a third party, Jimmy McCaw White was in the proximity of Mary Stewart's home near the time the State asserts she was beaten and raped. See testimony of Renata Jamison, Neshelly Gilmore and Delores Brown. (The Court finds Annie Boyd's testimony insufficient to place Jimmy McCaw White in the area at the time).

The defendant presented Joshua Lytle to rebut Jimmy McCaw White's testimony that he rode to Sharon with Lytle hours prior to the purported time of the beating and rape. The Court finds this evidence supports the testimony of the three "proximity" witnesses set forth above. Additional, it shows that Jimmy McCaw White's testimony is subject to impeachment on this issue (i.e. his being at

home in Sharon at the time of the crime) if he were to be called as a witness at trial.

The defendant presented testimony by John Dixon and Nancy Bennett, which does not amount to a confession by Jimmy McCaw White as the party guilty of the murder of Mary Stewart. The testimony of Thomas Murray, Steven Westbrook, Mattie Mae Scott and Ken Rhodes do rise to the level of testimony from which one could conclude Jimmy McCaw White has admitted in the presence of these witnesses that he beat and raped Mary Stewart.

Defendant presented a theory on motive for Jimmy McCaw White being the guilty party, that motive being his "fixation" with "older women". The testimony does not rise to the level to establish this as a propensity of Jimmy McCaw White with the possible exception of Ken Rhodes' testimony, which marginally could be taken as evidence of a penchant for older women by Jimmy McCaw White.

Jimmy McCaw White testified he did not commit the crime Defendant is charged with in the above set forth indictment.

At first blush, the above arguably rises to the *Gregory* standard. However, the "engine that drives the train" in this *Gregory*, analysis is the "confessions" by Jimmy McCaw White. Such "confessions" are, of course, hearsay. In order for Mr. Holmes to put the engine on the track, these hearsay "confessions" must be admissible as declarations against penal interest under rule 804(b)(3), South Carolina Rules of Evidence. Admissions under this Rule when offered to exculpate an accused, must be corroborated by evidence clearly indicating the trustworthiness of the statement. *State v. Kinloch*, 338 S.C. 385, 526 S.E.2d 705 (Sup. Ct. 2000), *State v. Forney*, 321 S.C. 353, 468

S.E. 2d 641 (Sup. Ct. 1996) and *State v. Doctor*, 306 S.C. 527, 413 S.E. 2d 36 (Sup. Ct. 1992).

Here, Defendant bears a "formidable burden" in meeting the Rule's requirements (*Kinloch*, 526 S.E. 2d 706) and Defendant's presentation does not meet this burden. Thus the train's engine is not on track and the train cannot travel into and through this case. The evidence here presented pales in comparison to that excluded in *Forney*, and in *Forney* the declarant was in fact a co-defendant and Forney testified as to the witness being present at the shooting of Officer McCants and named his co-defendant as the triggerman (468 S.E. 2d at 644). The evidence presented by Defendant falls woefully short of that in *Doctor*. In *Doctor* all three minor defendants had related identical versions of the crime and three witnesses saw the stolen car be occupied by the witnesses whose statements against penal interest were offered without Doctor in the car.

Here, as in *Forney*, there is no independent evidence corroborating Jimmy McCaw White's alleged statements that he committed the beating and rape of Mary Stewart. As the Supreme Court observed in reference to *Forney*, in the Court's opinion, in *Kinloch*, for the statements to rise to the level of trustworthiness, there should be "independent evidence corroborating the *declarant's* claim" (Emphases added, 526 S.E. 2d at 707). Additionally, at the time of the alleged statement in the presence of Mattie Mae Scott, Jimmy McCaw White was, according to her, "intoxicated." (See *Kinloch* regarding statements by those under the influence of drugs).

None of the proffered testimony contains evidence, absent the statement itself, which would link Jimmy

McCaw White to the crime other than information that from all the testimony appears to have been common knowledge, i.e. an "old woman" had been beaten and raped in the early rooming hours and that Defendant had been tried, convicted and sentenced to death for the crime. None of Jimmy McCaw White's statement contain details of the crime and no forensic evidence has been offered linking Jimmy McCaw White to the crime. White's alleged statements are general in nature and his presence in the general area during the time period in which the crime is alleged to have occurred, does not corroborate his alleged "confessions".

Exclusion of the alleged statements of Jimmy McCaw White, will leave not only the engine missing from the train, but results in there be absolutely no facts or circumstances which clearly point to Mr. White or anyone else as the person guilty of the beating and rape of Mary Stewart. This being the case, the *Gregory* analysis ends here and Defendant's motion to present evidence of Third Party is DENIED.[1]

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[1] Defendant argues in his brief that Jimmy McCaw White's statements may be used to impeach his testimony. As to how Mr. White would even be on the stand in this trial is only by convolution addressed in Defendant's brief. Impeachment of any witness will be a matter to be dealt with at trial. (Save the Court's prior rulings regarding Defendant's prior record). If Mr. White does have relevant testimony such as to be a witness at trial, the issue of impeachment is deferred to that time should it occur.

IT IS SO ORDERED.

/s/ John C. Hayes, III
John C. Hayes, III
Presiding Judge

August 23, 2000
York, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF YORK	) IN THE COURT OF GENERAL SESSIONS
THE STATE -vs- BOBBY LEE HOLMES, Defendant.	) TRANSCRIPT OF RECORD) 90-GS-46-1196) 90-GS-46-1197) 90-GS-46-1198) 90-GS-46-1200) MARCH 17, 2001) YORK, SOUTH CAROLINA

VOLUME VI

BEFORE:

HONORABLE JOHN C. HAYES, III, JUDGE; and a Jury.

APPEARANCES:

THOMAS E. POPE, SOLICITOR
WALTER WILLIAM THOMPSON,
ASSISTANT SOLICITOR
KEVIN BRACKETT, ASSISTANT SOLICITOR
E.B. SPRINGS, IV, ESQUIRE
Attorneys for the State.

WILLIAM N. NETTLES, ESQUIRE
JAMES M. MORTON, ESQUIRE
MARK J. MACDOUGALL, ESQUIRE
JONATHAN M. KRELL, ESQUIRE
JEFFREY BLOOM, ESQUIRE
Attorneys for the Defendant.

* * *

[2016] THE COURT: All right. Is the State ready to proceed on the – I think the first issue, because it may arise today before we draw the jury, it has nothing to

do with the jury, is the issue concerning the – for lack of a better word, those multiple issues that fall under the category third-party guilt.

Of course, the court has earlier ruled that the defense would not be able to utilize a defense of third-party guilt, particularly the guilt of one Jimmy McCaw White. I have issued a written order on that. A motion to reconsider has been issued – has been filed.

At this point I am not convinced to change my earlier ruling as to the third-party guilt issue. Under the case law, the third-party guilt must point I'm using my words. I don't have my case in front of me, but point to the third party and arise above suspicion and exonerate, for lack of a better word, the person who is charged. I don't – I may have to revisit this after I hear the State's case, and that would be the point which the defense would want to present that evidence anyway. But at this point I'm going to stick by my earlier ruling.

* * *

[2023] THE COURT: Again – let me finish. I know I'm going very slow, and like some of these jurors, I'm being somewhat pensive.

And I guess, though, again I'm at that point as to the third-party guilt. I don't know that I can account for where I was that night, and that doesn't necessarily mean that I was in this neighborhood or committed this crime. I haven't confessed to it, as Mr. White supposedly has, but there were literally, I would think, dozens. I'm not going to go so far to say hundreds of people. I mean obviously, they have – not obviously, and I hate to make a leap, although I think it's intellectually honest that people lived in those

other apartments and there were people that – there were more people than Jimmy McCaw White that had access to Mary Stewart's house at that time of the morning on that day. The [2024] fact he had access to it and was there does not point away from Mr. Holmes guilt.

Confessions do bother me, although they, in and of themselves, him simply making those statements, they don't completely point away from Mr. Holmes guilt, but they, at least, perhaps rise to the level of raising some question about it. All right.

* * *

[2028] THE COURT: But then, again, the defense, while maybe not entitled to present that as a defense, certainly would appear to have the right to develop the extent of the investigation.

* * *

[State's Witness Maggie Berniece Thrasher –
Direct By Mr. Thompson]

[2148] Q * * * Did you get to talk to her?

A Yeah, shortly after that, then she called me back. And "this is Ms. Stewart." And I said – she was so upset, she just all to pieces, I say. And she said "I'm in trouble over here." I said "in trouble. What happened." She said "I have been beat up and I have been raped." That's what she told me. She did. I asked her.

* * *

[2150] A Well, when she talked to me she said it just had happened. He just had went out the door. Didn't tell

me exactly what time he come in, but at 7:45 she said he just had gone out the door.

Q And can you tell me, did she give any description of him at all, that you recall?

A Yes, she said it was a dark chunky fellow.

Q All right?

A Was kind of short, dark skinned fellow, chunky wide.

* * *

[2153] Q So the $40.00 was the amount that she said was taken?

A Yeah.

* * *

Q Can you tell us why you ended up calling Alaine Byers?

A Well, Alaine Byers had a key to Mrs. Stewart's apartment.

Q Uh-huh.

A And I didn't have no car home that morning to [2154] get over there, but I knew Mrs. Byers had a key to Mrs. Stewart's apartment and I knew Mrs. Byers had a car. And that's why I called Mrs. Byers to go over.

* * *

[State's Witness Alaine Byers – Direct By Mr. Thompson]

[2163] A It was between 7:30 and eight o'clock, somewhere in there.

Q Okay. And when you got that call, what did you do?

A Well, I put down everything that I was doing and went over there.

Q Okay. And how far is her house from yours?

A About a quarter of a mile.

Q So about how long, altogether, from the time that you got the call did it take you to get over to her house?

A Within five to ten minutes.

Q And when you got there, how did you get in?

A I had a key, because she had broken her hip prior to that. And she gave me a key in case she needed me, I could get in.

* * *

[2165] Q Now, when you came in, where was Mary Stewart?

A I did not see her when I went in, but I called to her. She answered and I went down the hall, turned to the left and she was sitting on the right-hand side of the door in her bedroom.

* * *

[2166] A Yes, I did. When I went in and when I saw her, I asked her, "Ms. Stewart, who in the world did this to you?"

Q And what did she say?

A She said that "I don't know who it was. It was my fault. I opened the door."

Now, do you want me to tell you the truth of what she said to me?

Q Yes, please, ma'am. If you remember the words she said, I would ask that you speak them to us today.

[2167] A She said "I don't know who he was. All I know is he was big and dark." Those are her words and God as my witness.

* * *

[State's Witness Officer Dale Edwards –
Direct By Mr. Pope]

[2182] Q Officer Edwards, if you could, tell the jury what happened when you arrived on the scene, who you met at the door and what you did.

A I was met at the door by Ms. Byers that had come up to the police department earlier. She led me back to where Ms. Stewart was sitting in the bedroom.

Ms. Stewart was sitting in a chair inside the bedroom. And I asked her what had happened and she gave me a set of facts that earlier that morning, around 6:00 or 6:30, she had heard a knocking at the door, and she went to answer the door, and at which time a black male forced his way in. And in the process, he was beating her about the head and chest and pushed her back into the bedroom, at which time he tore her nightgown off and began to rape her. She said that he couldn't have vaginal sex with her, [2183] so he began to have anal sex with her because she was too small.

She said that the whole time he was beating her about the head and chest and ripped her nightgown off, she said something about, "you know, just take my money, take my

$40.00," at which time he went to the pocketbook and removed the $40.00 and left.

* * *

[2184] Q Okay. Could you take a look and just confirm and tell me what State's Exhibit No. 2 is?

A It appears to be the bed clothing that was removed from Ms. Stewart's bed that day by me and Lieutenant Barnett.

Q And you got that from Ms. Stewart's bed?

A Yes, sir, we did.

Q Okay. Now, in this container, this newer bag that's also torn, there is another bag in the bottom that has a No. 2 on it, doesn't it? You have looked at that previously also?

A Yes, sir, I have.

Q Okay. And so at the time that you recovered it, what did you place these items in?

A A plastic – a paper bag that come out of the kitchen.

Q So as far as the plastic bags that I have them separated into, you did not put them into these –

A No, sir.

Q – items. Okay.

MR. POPE: Your Honor, I would move State's Exhibit No. 2 into evidence.

* * *

[2186] Q Okay. Finally, I would show you what would be identified as State's Exhibit 4 for identification. And I know you have previously had an opportunity. Again I would ask you to look at this item.

(Pink Paper Towel marked as State's Exhibit No. 4 for identification)

A Yes, sir, this is the paper towel that Ms. Stewart had given me personally.

Q Okay. And did she indicate what the significance of this paper towel was?

A It had blood on it.

Q Okay.

* * *

[Officer Dale Edwards – Cross By Mr. Morton]

[2201] Q You began to gather evidence at the scene?

A Yes, sir.

Q You went into the bathroom and got the night-gown that she had been wearing?

A That's correct.

Q That she had placed in the bathroom?

A That's correct.

Q There was also a bathrobe in there of some kind, or some shoes?

A I don't remember any shoes.

Q Okay. You got a bath – I believe you got a bath – a nightgown, a bathrobe, and some bedroom shoes from the bathroom. Do you remember that?

A I don't remember the bathroom shoes, but, you know, if it's on the evidence report, then I got them.

Q Okay. In any event, you got a nightgown and a bathrobe, and for lack of anything better to put it in, you got a paper bag from her home?

A That's correct.

Q Just a regular old paper bag, like we all get from the grocery store?

[2202] A That's correct.

Q You didn't put it in one of these – didn't put it in one of these plastic bags. I know it's in there now, but when you got it, you just picked it up and put it in the –

A In the grocery bag, yes.

Q In the grocery bag.

And that was the nightgown that she was wearing and a bathrobe?

A Yes, sir.

Q You didn't notice any blood on the nightgown at that point?

A I did not look. She said she was wearing that. I grabbed it and put it in the bag.

Q Okay. You did notice blood on a paper towel, I believe?

A Yes, sir.

Q Okay. And you put that in a separate bag?

A Yes, sir.

Q Okay. Now, you weren't – you didn't have any gloves on, or anything like that?

A No, sir.

Q That was – back then you just – you all didn't wear gloves when you went to crime scenes?

A No, sir.

* * *

[Officer Dale Edwards – Redirect By Mr. Pope]

[2215] Q All the clothes that she had said that she had been wearing when this assault happened, they were just in a pile in the bathroom, and you just scooped them up with your bare hands and put them all together in a paper bag?

A That's correct.

* * *

[2219] Q You were trying to explain to Mr. Morton about the information concerning the hair length, and I think there was a clothing description too, is that correct?

A Yes, sir, there was.

Q Okay. And what was the clothing description?

A She stated that subject had on either a black or blue jacket.

* * *

[2235] this was her statement.

A Six a.m. and seven a.m. A male in his late twenties knocked on the front door of her home at 224 California Street. She opened the door and the man pushed his way into the home. He beat her about the face and body, knocking her down. Attempted to penetrate the vagina with his penis. Was unable to do so. Then penetrated her anus.

Q All right. Now, after getting that information from her – let's see if we can go down this, so the jury will have this, if you can just tell me a little bit about the description of the assailant, if she gave one at that point?

A The number of assailants was one. Late twenties. Black. He was a stranger.

* * *

[2236] Now, as you go through the next part of the form, it talks about the – I guess the actual examination of the lower body. Was that actually done at that point in time?

A No, because –

Q Why is that?

A Because of her complaint of hip pain.

Q Okay.

A And we were – the doctor wanted to wait for x-rays.

Q Okay. So you needed to take x-rays before you would move her, basically her pelvic region?

A Right.

* * *

[2238] Q And can you tell me on the last page, I believe it shows the time in which the kit was – or this was – this part of this was finished. And do you have – can you tell me what time it was when you finished that up?

A 11:15.

Q I'm sorry, where do you see that on the form?

A Oh, wait a minute. The next thing I have with the time is that she – you know, that was when we had the change of the mental – mental status change.

Q Mental status change?

A Where she became confused.

Q Okay.

A Did not recognize anyone any longer.

Q Okay.

A And that was when everything ceased, so that she could be transferred to Piedmont Medical Center at that time.

Q So you didn't ultimately do an exam of her vagina or her anus at that time?

[2239] A No, sir.

Q And you are saying that's due to her mental condition changing at that point?

A Right.

Q Okay. And that's what that 11:15 is?

A I think – Dr. Gwinn up at P.M.C., that was where we were transferring her to at 11:15.

Q Okay. And now if you would look at the last page, the one which you have signed it there, next to the date?

A Uh-huh.

Q What is the time on that?

A That's 9:50.

Q Would that be the time that you completed the kit itself?

A My part, yes.

Q Your part of the kit.

And what did you do with the kit ultimately?

A It was turned over to James Smith.

Q And who was he?

A He was a police officer.

Q A police officer?

A Police officer.

Q With the York Police Department?

A Yes.

[2240] Q And what time do you have it listed that that was turned over to him?

A Two o'clock.

Q And was it sealed at the time that you turned it over to him?

A Yes.

Q And can you tell me – you had mentioned mental changes. Can you tell me what you noticed at that time, noticed in mental changes?

A When she first came in she was alert, oriented, responsive. She knew who she was, where she was, what time of day it was.

Her son arrived. She knew him.

Then the mental – okay, I'm not allowed to diagnose, but she had mental – pressure was building up, I presume, and she didn't know who she was. She became confused. She didn't know her son any longer.

Q Okay. And that was right around the 11:15, is why she was ordered –

A Right, when we were getting ready to transfer.

Q Where were you going to transport her at that time?

A To Piedmont Medical Center.

* * *

[Carol Cole – Cross By Mr. MacDougall]

[2244] Q Ms. Stewart, on Form 4, which I think goes onto Form 5, page four and page five, when you testified to Mr. Thompson, you described the protocol generally as taking fingernail scrapings, blood, semen samples, and so forth. But, in fact, with Ms. Stewart you took no fingernail debris scrapings at all?

A I did not record it, so I don't believe I did.

[2245] Q Okay. And you took no semen samples or no semen debris?

A We could not do the vaginal due to – well, first of all, she was complaining – she complained when we moved her hips. And in order to take that kind of specimen, you have to be able to separate the hips. So we could not do that. We wanted x-rays to make sure there was nothing broken before we, you know, attempted that.

Q Okay. So the only thing you took was the blood samples?

A Basically, yes.

* * *

[2250] Q So, in fact, this rape kit had expired eight months earlier, is that right?

A Yes, according to this.

Q According to that. And so it shouldn't have been used, should it?

A Probably not.

* * *

[State's Witness Dr. Todd Gwinn –
Direct By Mr. Thompson]

[2260] A At – let's see, at eleven o'clock the patient had a sudden acute change in mental status, meaning that she began to speak in garbled speech, appeared confused. So her neurologic exam had changed. The remaining neurologic signs were unchanged. There was nc focal weakness, etcetera. But in view of the bruises on her head

and the changes in the mental [2261] status, that was enough of an indication to recommend an emergent CAT scan and look for bleeding inside the brain.

* * *

[State's Witness Dr. John W. Macey, Jr. –
Direct By Mr. Thompson]

[2282] Q And if you would, tell me were you practicing medicine in December of 1989?

A Yes, I was a resident in training at Charlotte Memorial Hospital & Medical Center.

Q And as a resident in training there, did you have an occasion on December 31st of 1989 to come in contact with Mary Stewart?

A Yes, I was called to the recovery room to perform a rape exam on this patient.

Q All right. And this is at which hospital again?

A Charlotte Memorial.

Q Memorial Hospital?

A This is now called Carolinas Medical Center.

Q Okay. And did you perform a rape kit on her at that time?

A Yes, I did.

* * *

[2284] Q Look at State's Exhibit No. 8. if you could look at that and tell me what was collected at that time?

A The patient's clothing, pubic hair combings, vaginal smears and swabs, anal smears and swabs, saliva samples, blood samples, head hair and pubic hair.

Q Okay. And, in fact, does it give an instruction at the top of that page as to what would be done with those when they are collected?

A Yes, it does.

Q What does that say?

A It says "follow the instructions found in North Carolina sexual assault evidence collection kit. Clearly identify date, initial, and seal all containers. Check off items that are collected."

Q All right. And did you do that? Did you seal all containers?

A Yes, I did.

Q And what ultimately did you do with the kit at [2285] that point in time?

A I handed it personally to Scott Johnson, detective, City of York Police Department.

Q Now, according to that, you would have given both the rape kit and the clothing to the officer?

A That's correct.

Q Okay. Thank you.

* * *

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF
COUNTY OF YOR	)	GENERAL SESSIONS
THE STATE	)	TRANSCRIPT OF RECORD
	)	90-GS-46-1196
-vs-	)	90-GS-46-1197
	)	90-GS-46-1198
BOBBY LEE HOLMES,	)	90-GS-46-1200
	)	MARCH 17, 2001
Defendant.	)	YORK, SOUTH CAROLINA

VOLUME VII

BEFORE:

HONORABLE JOHN C. HAYES, III, JUDGE; and a Jury.

APPEARANCES:

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WALTER WILLIAM THOMPSON,
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* * *

[State's Witness Officer Wilson Barnett –
Direct By Mr. Pope]

[2325] Q Did you have an opportunity to respond to Ms. Stewart's residence, at 224 California Street?

A Yes, I did.

Q And could you tell the jury, do you recall [2326] approximately what time that you arrived?

A Between 8:00 and 8:15.

* * *

[2329] Okay. At that point, or some point there, did you have a chance to leave and go up to the hospital and speak to her again?

A Yes, after I had gotten – the scene was secure and everything, I left and went to the hospital.

Q And did you have an opportunity in talking to her to record her statement?

A Yes, I did.

Q And this was right after you left the house and had gone up the hill?

A Right.

Q Okay. And have you reviewed a copy that – we have a copy of that tape?

A Yes, I have.

* * *

[Officer Wilson Barnett – Cross By Mr. Nettles]

[2334] Q Did you ever touch the sheets?

A Yes, when we took them off the bed.

Q Right. And you did not have on gloves?

A No, I did not have on gloves.

Q You took the sheets off the bed, and the sheets [2335] were not placed in plastic bags?

A When we took the sheets off the bed, we folded them up and Officer Edwards took them out into the other room.

Q Okay. Took them out into the other room and put them on the table, the dining room table?

A Where he put them, I don't know. I was in the room with Ms. Stewart.

Q Did you have – was your – was your gathering of the sheets limited to taking them off the bed?

A And folding them up.

Q And folding them up.

A Helping to fold them up.

Q Helped to fold them up. Did you fold them up like the two of you?

A Yes, we folded them.

Q So y'all were, you know, doing like you kind of do, folding up blankets when two people do it?

A Yes, that's the way we did it.

Q You did that with the bottom sheet and the top sheet?

A Yes.

* * *

[2340] Q Okay. Now, when you discussed with Ms. Stewart – you actually discussed that with her during the statement that you took from her?

A What is that?

Q Well, you said "tell me things he touched."

A I said "tell me what he did."

Q "Tell me what he did."

A If I recall it.

Q All right. Well, she at least – well, at one point she said "there were plenty of things he touched?"

A Yes, she told me he touched the telephone, he touched the pocketbook, he touched the door.

* * *

[2346] Let's talk for a second about your conversation with Ms. Stewart, if we may.

A Okay.

* * *

[2350] Q As a matter of fact, she described the hair as "the hair was kind of long. Not too long, but a little longer than you usually wear it."

[2351] A Then who usually wear it?

Q That's what she said. Than you usually wear it.

A Than you usually wear it.

Q That's right.

* * *

[2352] Q Now, she asked you – as a matter of fact, she said "he was middle aged. He was young. He was not too young. And he, as I remember, his hair was not short or not too long."

A She kept me off balance. When she made the statements like that, I couldn't figure out where she was going. Whether she was going or coming, I didn't know. Not too long. Too short. Not old. Not young.

* * *

[2353] Q Okay. There was never a picture of Bobby Holmes shown to Ms. Stewart?

A I don't know.

Q Okay. You never showed a picture to Ms. Stewart?

A No, I did not.

Q There was not a photo lineup of Bobby Holmes shown to Ms. Stewart?

A I don't know.

Q You never showed a photo lineup?

A I didn't.

* * *

[Officer Wilson Barnett –
Redirect By Mr. Pope]

[2357] Q Okay. She didn't say maybe he had on a jacket, maybe he did not have on a jacket. She said he had on a jacket?

A No, he had a jacket.

Q And you asked her the color or type, and she said "this was a dark jacket, must have blue or black, must have been black, because," she said, "you see, I don't see too well, you know, without my glasses."

A Uh-huh.

* * *

[State's Witness Officer Scott Johnson –
Cross By Mr. Nettles]

[2376] Q Okay. Now, Deputy Johnson, you were called to the scene of this assault on December 31st of 1989?

A Yes, sir.

Q And you were called there in your capacity as a K-9 officer?

A Yes.

Q Correct. And in your capacity as a K-9 [2377] officer, you brought the dog, right?

A Yes, I did.

Q And that was a bloodhound?

A Yes.

Q And you went to the scene on California Street?

A Yes.

Q And there you put the dog on a scent, correct?

A Well, we look for a scent. We don't just put it on. It's not an visible so –

Q Well, let's –

A We were looking for a scent.

Q Let's sort of cut to the chase.

A Okay.

Q The dog goes and you follow the dog, right?

A That's correct.

Q And that dog led you to a tank top on Pecan Circle, correct?

A That's right.

Q And then you – the dog sort of recognized some significance to the tank top, correct?

A Yes, sir.

Q And so as the result of the significance that the dog gave to the tank top, you picked up the tank top, correct?

A That's right.

* * *

[2382] Q Okay. You found the blue tank top – you and the dog found the blue tank top on Pecan Circle?

[2383] A In the area, yes.

Q In the area of Pecan Circle?

A That's right.

Q That is what, twenty-five, a hundred yards away from California – from where the incident happened?

A It would be. Yeah, it would be close.

Q Twenty-five, or a hundred, or do you even know?

A It's not – it's somewhere in that vicinity, yeah. That close.

Q Can you tell me, if we were all to get in the car, could you take us to where you found the blue tank top?

A I don't know if I could or not. It's been a long time.

Q Okay. Can you get any more specific about the location of the blue tank top that you and the dog found, other than in the Pecan Circle area?

A I just remember it was on what we refer to in the south as a pig path. It would be a beaten path.

* * *

[State's Witness Officer Grady Harper –
Direct By Mr. Pope]

[2394] Q Could you tell the jury where the Cannon Court Apartments are located?

A Cannon Court Apartments is located right down below Blackburn Street on Ross Cannon.

Q Okay. That's here in York?

A Back to the left.

Q Okay. In that early morning hours of December 31st, did you receive a call to respond to Cannon Court Apartments, back in 1989?

A I did.

Q Okay. Do you recall approximately what time that you received the call?

A Around four something. If I had the log, I could remember. That's been a good while back.

Q You say log, what are you referring to?

A The radio log.

Q Okay. Would the radio log assist you in refreshing your memory?

A It would.

Q If you could, Officer Harper, if you can look at that and tell me when you were dispatched to Cannon Court?

A Around about 4:43.

* * *

[2395] If you would describe for the jury what you observed when you got there at Cannon Court?

A I went into the apartment over to the left of Cannon Court, which the older people lived in, and it was a disturbance going on there.

Q When you say disturbance going on, where was the disturbance taking place? And I'm not asking you about address as much as I'm asking about general area.

A It was at Cannon Court Apartments.

Q Inside or outside?

A They was everywhere around. It was bunch of them that was causing a disturbance.

Q Okay. And what did you do at that point?

A I told them they was going to have to quieten it down.

Q Okay. And did you know Bobby Holmes before this night?

A I did.

[2396] Q And did you see him that evening at Cannon Court?

A I did.

Q Okay. And did you – and is this the young man sitting over here in the white?

A That's right.

Q After seeing him that evening, did you have an opportunity to have a discussion with Mr. Holmes?

A I did.

Q Okay. And once you had a conversation with Mr. Holmes, what did you do next?

A I told Mr. Holmes and the rest of them there that they were going to have to quieten it down and move on.

Q Once – I didn't mean to interrupt you, but once you spoke to Mr. Holmes – I don't want to get into the substance of what was said, but once you spoke to Mr. Holmes, what did you do?

A Once I spoke to Mr. Holmes?

Q Yes, sir.

A I actually was talking to the whole bunch there. Mr. Holmes told me that – I said "you are going to have to move on." And he said "you are –

Q Let's don't get into what Mr. Holmes said. I apologize for keep interrupting you.

[2397] Did you have the opportunity to call the other officers to come to the scene?

A I did.

Q Okay. So did you have to go back to your car to do that?

A I did.

Q And once the other officer arrived, then what did you do?

A I told him what was going on and that Mr. Holmes was a little bit unruly and wouldn't listen to nothing I had to tell him and it looked like we was going to have to put him in jail for not leaving there, the disturbance, and everything. I wasn't wanting to have to put him in jail, but, you know.

Q But at that point you made the determination that you were going to arrest Mr. Holmes, is that correct?

A That's correct.

Q Okay. And what did he do?

A Well, they was having – it was just a disturbance going on there.

Q I'm not talking about that gave you cause to arrest him. I'm trying to avoid that part of it. What did you do – what did he do when you attempted to arrest him?

[2398] A He ran.

Q Okay. And what did the other officers do?

A They give chase.

Q Okay. Once they got – were they able to catch him at that time?

A No, they wasn't.

Q Okay. And once they came back, what did you do then? Once they came back – the officers came back, Mr. Holmes was gone, what did you do then?

A Well, Mr. Holmes and the crowd dispersed from there. They all was leaving. So I took my patrol car and went up the street to the maintenance building and sat and watched for Mr. Holmes to come back.

Q Okay. The maintenance building, where is that in relation to Cannon Court?

A Just right up above it.

Q So you kind or went up there and parked and just kind of watched?

A On the same side of the street.

Q You just watched and waited?

A That's right.

(Photograph marked as State's Exhibit No. 11 for identification)

Q I'll show you what's been marked as State's [2399] Exhibit 11 for identification and ask you if you can take a look at that. You previously had a chance to look at that?

A I have.

Q And what does that picture depict?

A Ross Cannon, Cannon Court and First Street, and Central Baptist Church.

Q Okay. And the way that you are looking, where was the – where you were set up for surveillance, where would that be in relation?

A It was right up above there at the grill. Up above the grill, at the maintenance place.

Q So State's Exhibit 11, would that accurately reflect what you were seeing in that direction?

A That's correct.

Q Okay. And the small road that is coming in here, what?

A That's Cannon Court into the apartments.

Q Okay.

MR. POPE: Your Honor, I would move State's Exhibit 11 for identification into evidence.

MR. MORTON: Without objection, Your Honor.

THE COURT: All right. Without objection, it's received into evidence.

Q Officer Harper, can you see that?

[2400] THE COURT: If you need to step down, you certainly can.

(witness off the witness stand)

Q Officer, if you would, first tell the jury – you again said in this configuration, this would be the view that you

would be taking for Cannon Court – I mean from where you set up, is that correct?

A That's correct.

Q Could you tell the jury what this road is here?

A That's the street end of Cannon Court Apartments.

Q So what would be over in this area?

A Cannon Court Apartments.

Q Okay. And could you tell the jury what this is right here?

A That's Central Baptist Church.

Q Okay. And right in here is –

A First Street.

Q Okay. All right. You can have a seat, sir.

(witness back on the witness stand)

Q Okay. Once you set up – I keep saying surveillance. When you set up there and started watching, did you ever see Mr. Holmes again?

A Yeah, I did.

Q And could you tell the jury what you saw and [2401] what he was doing at that point?

A He came back out and Mr. Digsby picked him up.

Q And where did you see him pick him up at?

A Right there at Ross – at Ross Cannon and where you turn into the Cannon Court.

Q Okay. So the road that you had indicated went into Cannon Court, you were looking and saw him right there?

A That's correct.

Q And what did you do at that point?

A I – they came out and they turned to the left going down Ross Cannon. And I went down and I turned my blue lights on. And they went into First Street at Central Baptist Church and they jumped out of the car, left it running, and run into a bunch of hedge bushes and just sat there.

Q So in this picture that we have been referring to, that's the church that you referring to?

A That's correct.

Q Okay. And the road, First Street is right on the other side of that church, is that correct?

A That's correct.

Q Okay. And you were behind them and they turned into that – into that road and into a yard?

A That's correct.

[2402] Q Okay. What, if anything, did you see? What did you see Mr. Holmes, if anything, do at that time?

A Mr. Holmes jumped out of the car.

Q And where did he go?

A Behind Central Baptist Church.

Q And that's again the church that we are referring to?

A That's correct.

Q Okay. Let me ask you this. When you saw him get out of the car, how did you know that was Mr. Holmes?

A I know Mr. Holmes.

Q And did you have the opportunity to see them then?

A I did.

Q And did you notify – your supporting officers, did you notify them that Mr. Holmes –

A I did, as soon as I seen the car picked him up.

Q Okay. And what happened to the driver, Mr. Digsby, in that car? What did you do with him?

A I arrested him.

Q Okay. Now, did you give chase to Mr. Holmes behind the church?

A I couldn't, because I had a car sitting there [2403] running in gear and had a prisoner already. I mean, you know.

Q All right. So you saw him initially up at the apartments. Then you see him get in the car and you follow him to behind the church, is that correct?

A I did.

Q Once he runs and goes behind the church, do you see him again?

A I did.

Q Okay. And could you tell the jury when you saw him again?

A I had got the prisoner situated and the car knocked out of gear and I seen Mr. Holmes talking to my fellow officers.

Q Now, could you tell the jury, looking at the picture, of where you would have seen Mr. Holmes talking to them?

A It would have been around on – it's speculating. Around on First Street, to your left the second – the third house down, I believe, it was the hedgerow.

Q That's where –

A Off the left-hand side. That's where they jumped from.

* * *

[Officer Grady Harper – Cross By Mr. Morton]

[2406] Q Now, when Mr. Holmes ran from you, several other people ran as well, right? He wasn't the only one that ran. There were a couple other guys that also ran when you came pulling up, right, or after you were there?

A That was – it was – it was people leaving from there, but I didn't – I didn't see no one but Mr. Holmes when he got in Mr. Digsby's car.

Q Now, I'm not – I'm not – I'm not talking about that. I'm talking about when you first got down there and he first you say ran and jumped over the wall. In other words –

A He didn't – he didn't run until I had my other men come down.

Q Okay. But other people ran too, right? There were a couple other guys that were also running?

A They were leaving, like I asked them to do.

Q Okay. And that's what Bobby Holmes was doing. He just ran, right?

[2407] A After a few choice words.

* * *

[2409] Q Okay. And all this was going on, Mr. Holmes was running away from downtown, right? That would be away from California Street?

A That would have been right, but I don't know where he went from there, because I didn't see him.

Q But when you saw him running from the officers that third time, he was running away from California Street?

A He was running parallel behind the houses on Ross Cannon Street.

Q Okay. Which is away from California Street?

A That's right.

* * *

[Officer Richard J. McCarter – Direct By Mr. Pope]

[2421] Q What did you determine concerning Mr. Holmes?

A The lieutenant advised us that he had ran behind the church, which is First Street. As you see the church, First Street is just on the other side of it. And he had ran back behind the church, which would be this way behind the church.

Q Okay. Could you tell the jury what you and Officer Driggers did then?

A We got in the car – after he got him handcuffed, we got in the car and came out beside the church right there to Ross Cannon and turned to come back toward the Cannon complex.

Q So –

A We made a left turn back towards the complex, yes, sir.

Q Once you came out and turned in that direction, did you see Bobby Holmes again?

A He came out from the church just ahead of us into the road there at Ross Cannon and stopped, yes, sir.

Q And did you have the opportunity at that point to have a discussion with Mr. Holmes?

A We – Otis – Officer Driggers got out of the [2422] car on the passenger's side. He was the passenger and I was driving, and we got out and spoke with Mr. Holmes there in the road.

Q Okay. Based on that night – at this point you are looking for him to arrest him, is that correct?

A Yes, sir.

Q Did you arrest Mr. Holmes at that time?

A No, sir, he turned and ran back toward the lieutenant, which he had come down to the corner there of First Street at the church and ran back toward the lieutenant and then turned down between two homes and ran off in that way.

Q Okay. And why didn't you arrest him at that point?

A We were unable to get ahold of him.

Q And did you, in fact, pursue him or attempt to pursue him?

A Yes, sir, we backed up and we took off. We didn't know which way he was going, and I followed him with the patrol car between two houses down into a ditch that runs behind the houses here on the left side of the road here, between that and the complex.

Q Okay. And do you recall approximately the last time that you saw him?

A Approximately 5:20.

* * *

[State's Witness Terrence Digsby –
Direct By Mr. Thompson]

[2427] Q Back at that time was there a disturbance at any point, during the time that you were at Cannon Court or his sister's house?

A Yeah, Bobby Holmes and Bobby Hemphill got in an argument.

Q As a result of that, did the police come?

A Yes.

Q When the police came, what happened at that point?

A We calmed down and they said we had to leave the premises.

Q Okay. And did Bobby leave at that point?

A Yes.

Q And can you tell me how he left?

A He ran.

Q And was anyone chasing him?

A Yeah, the police.

* * *

[2428] Q Okay. Did you leave at that point or sometime around there?

A I left a little bit after the police left.

Q Okay. And when you left, did you have a vehicle or did you walk?

A A vehicle.

Q And what vehicle were you using?

A My car. I had a Chevette, a blue Chevette.

Q All right. Had you been taking people around in this Chevette that night?

A Yes.

Q Can you tell me in the Chevette did you have any beer in there?

A Yes.

Q Had you all been drinking that beer that day?

A Yes.

Q Okay. When you left, what happened at that point?

A When I was leaving, I seen Bobby come over the wall – like a wall.

Q And where is the wall?

[2429] A Like going out of Cannon Courts, like a wall behind.

Q Behind one of the apartments there at Cannon Court?

A Yeah.

Q Okay. He came over it. What did he do then?

A I told him to get in the car.

Q All right. Did he get in your car?

A Yes.

Q Did he get in the front or the back?

A The back.

Q And what did you do at that point?

A I told him to lay down.

Q Did he?

A Yeah, but he kept on peeping up.

Q Okay. And that's before you ever got out of the road leading out of Cannon Courts?

A Yes.

Q Where did you go from there?

A I went to the corner.

Q All right. And did you turn one way or the other at that point? I believe that's at Ross Cannon?

A Evidently I made a left.

Q Down towards the church?

[2430] A Yeah.

Q What happened at that point?

A The police was sitting in the parking lot – in the parking lot right beside the street.

Q Okay.

A And they followed me.

Q Did they pull you over?

A Yeah.

Q Where did you pull over?

A Right beside the church, but it was in somebody's yard. Somebody's driveway.

Q What did Bobby do at that point?

A He got out and ran.

Q And what did you do?

A Sat there.

Q Okay. Were you – did you get arrested at that time?

A Yes.

* * *

[2436] Q Right. And Bobby was your age, or thereabouts?

A Yeah, it was in '89, in December.

Q Right.

A Yeah, I would be eighteen.

Q Is that right?

A Yes.

Q And Bobby looked, as far as his hair is concerned then, pretty much the way he looks now, right?

A Yes.

Q Short hair?

A Yes.

* * *

[2445] Q Okay. They came up and started asking you about some stolen car?

A Yeah.

Q And about Bobby Holmes' involvement in it?

A Yes.

Q And as a result of that they got a warrant for Bobby Holmes?

A Yes.

* * *

[State's Witness Officer William C. Mobley – Direct By Mr. Pope]

[2479] Q And could you tell the jury when you arrived there, what you then observed?

A When I arrived, there was Lieutenant Barnett, Officer Edwards, Bobby Brakefield. I also seen the York Rescue ambulance parked outside the area.

As I approached the front of the apartment, I noticed the rescue personnel coming out with the stretcher.

* * *

[2482] Q Okay. Did you do any – and in addition to receiving that evidence, did you do anything else, as far as the scene itself?

A Yes, sir, after I talked with the officers, I think I instructed Lieutenant Barnett to go to the hospital to talk to the victim there at the hospital, and also asked Officer Edwards to go door to door and start talking with people in the area to see if anyone seen or heard anything.

I think at that time Officer Johnson showed up with the bloodhound, and I think him and Chief Morton got together.

At that time I went inside the apartment and closed and locked the door and started processing the apartment.

Q Okay. You talking about closing and locking the door, who else was in the apartment with you when you did that?

A I was in there by myself when I processed it.

* * *

[2485] A I did recover a telephone that was – it was unplugged. I believe it was sitting on the kitchen table. Also a pocketbook that was sitting on the kitchen table also.

Q Okay. Did you have the opportunity – again, tell the jury – okay – all right. You have – now you have looked over the scene, you have looked for evidence, what else is entailed in processing the scene?

A After that, I started dusting for fingerprints. I started in the bedroom, where the incident was supposed to have occurred at, and I started working my way towards the front of the house.

I started in the bedroom, dusting around the bed, the dressers, around the door panels.

Worked my way into the bathroom. I think I dusted the sink, commode, around the door. Even dusted some in the floor to see if there was footprints.

Worked my way back into the kitchen area, around the sink, the stove, kitchen table.

Basically worked my way out of the apartment.

Q Back toward the front door?

A Yes, sir.

* * *

[2487] Q And you were explaining to the jury, as you were working out toward the exit – was there only the one exit?

A Yes, sir.

Q Okay. As you were working toward that area, what, if anything, did you find in any of the areas concerning fingerprints?

A In the residence itself, I found several smudges in the kitchen area around the sink, the stove area. But a smudge – in order to identify any fingerprint, you have to have ridge [2488] characteristics or identifiable characteristics that you can identify that particular print from.

The smudges didn't contain any characteristics that would be suitable for any identification.

I worked my way back to the front door. On the interior part of the front door, just a little bit above the doorknob and the door lock, I found a latent print that I developed that did have enough ridge characteristics and identifiable points that I felt like would be suitable for identification.

* * *

[2493] Q As far as working the door, did you come outside and ultimately work the outside of the door?

A Yes, sir, I did.

Q And did you find identifiable print, for lack of a better term?

A Yes, sir, there was – there was another identifiable print on the outside of the door. Here again, I developed it. I believe I took a photograph of it and also lifted that one also.

* * *

[2495] Q Okay. And you mentioned the super glue thing on the phone. That's just a different technique as opposed to the powder?

A You still have to go back to use the powder. It's just the phone is black. The super glue would enhance the print a little bit better and make it a little bit more visible, since the phone itself was black and I'm using black fingerprint powder. And it would just enhance the print a little bit more and enable me to see. If there was a print there, it would enhance the print a little bit more to give me an idea if there was an identifiable print there.

Q Regardless, the pocketbook or the phone, you did not recover an identifiable print in either one?

A No, sir, I did not.

* * *

[2497] Q Okay. Based on the investigation as it evolved that morning, did you find an individual, a suspect, that you were looking for?

A Yes, sir.

Q All right. Who was that suspect?

A Bobby Holmes.

Q Okay. And what, if anything, did you do as far as trying to locate him?

A We started attempting to locate Holmes, probably it was about midday sometime. I would say 11:30, twelve o'clock. We had officers out trying to locate him.

Q Okay. Did you have an opportunity to actually go down – do you recall where he lived or one of the places that he lived at that time?

A Yes, sir, I had information that he was living at, I believe, at 124 Valley Road.

Q And could you tell the jury where that's located?

A It's about – if you go down from California Street approximately about another block, take a left and go down probably three blocks. From there. It's also located on the south end of York.

[2498] Q Okay. And did you say you had an opportunity to go there?

A Sergeant Smith and myself went by there earlier in the day. I don't not recall the exact time, but we did go by there, got out and knocked on the door. Did not receive an answer, and we left.

Q Okay. Did you have an opportunity to go back there later in the afternoon, around 2:00, 2:15?

A Yes, I did.

Q Could you relate to the jury what occurred when you went there?

A We went back. I believe it was a little bit after two. I'm not – about 2:15, 2:20, 2:30. I'm not exactly sure of the exact time.

When we went back this time, there was a vehicle parked in the driveway of the house. Sergeant Smith and myself, we went to the front door and knocked on the door. At that time an individual by the name of Willie Holmes came to the door and opened the door.

* * *

[2511] Q Okay. And you were explaining to the jury that what happened when you got there, and Mr. Holmes – not Bobby Holmes, but Willie Holmes, I'm sorry. Could you explain to the jury what occurred when you spoke to Mr. Willie Holmes? You were explaining when the jury left. Could you explain that?

A While we were there in the living room, as stated, we heard a noise in the back – or the front bedroom.

Officer Smith, Willie Holmes, and myself proceeded to the bedroom. Sergeant Smith knocked on the door, identified himself as a police officer. At that time the door opened and Bobby Holmes was standing there. He had on a black hooded kind of pull-over type sweat shirt on and was in his underwear and white socks on. He answered the door. At that time we told Bobby Holmes that we had warrants for his arrest.

Q And that was not for this case?

A That was not for this case.

Q Okay.

A At that time Bobby Holmes became very upset, started making some threats towards some individuals. At that time we told him he needed to [2512] go ahead and get dressed, that – at that time he proceeded to get dressed. While he was getting dressed, Sergeant Smith

was standing there and noticed a blue and white striped tank top laying in a chair at the foot of the bed. And at that time Sergeant Smith noted to me that it appeared the tank top had some blood on it. At that time Bobby Holmes stated that the blood came from a fight at Clyde's the night before. As a result of that, we asked both Willie Holmes and them if they had any objection if we took that tank top with us. He said he didn't.

THE COURT: Who said he didn't? You got two people in there. Willie and Bobby, so make sure you tell us which one it was.

A Willie Holmes said he didn't have any problems. Bobby Holmes never – I don't think he never commented to the affirmative or negative.

Q When you were there at that time, this was now – you have been dealing with Ms. Stewart's situation that morning. This is now over into the afternoon of that same day, is that right?

A That's correct.

Q Were you aware at that time before you saw the tank top of the nature of her injuries and the [2513] things that occurred?

A Yes, sir.

Q And so at that point you actually recovered the tank top?

A Yes, I did.

Q Was he allowed to get dressed?

A Yes, sir.

Q And did Officer Edwards come to Valley Road and bring the warrants?

A Yes, sir. Officer Edwards was called to meet us over there. He transported Bobby Holmes in a marked unit and transported him from Valley Road back to the York Police Department.

Q And did you and Officer Smith ride with him in that vehicle?

A No, sir, me and Officer Smith rode in a separate vehicle.

Q Okay. And did you serve the warrants on him there at the house?

A No, sir.

Q Where did you serve them on him?

A The warrants were served there at the York Police Department.

* * *

[2521] A Once they get to the jail, we process them, we put them into what we call a jump suit. And he was placed in a jump suit and we take the clothes at that time.

Q At that time did you also recover his wallet?

A Yes, sir.

Q Okay.

(Wallet marked as State's Exhibit No. 22 for identification)

Q I'll show you what's marked as State's Exhibit No. 22 for identification.

Q Can you see if you can identify that?

A Yes, sir, this is the wallet he had in his possession.

Q Again, also was there money in that wallet at that time?

A Yes, sir. I think he had two ten-dollar bills, four five-dollar bills and four ones. Let see. That's right.

* * *

[2525] Q Okay. And on the following – and he talked about – just generally what was the information about?

A We had talked to him about why he was there, about the incident that we arrested him for. We also went into the thing about the incident involving Mary Stewart.

* * *

[2529] Q Likewise, during your investigation, you had [2530] the opportunity at one point to go to Divine Savior and receive the rape kit that they did for Ms. Stewart, is that correct.

A Sergeant Smith and myself went down there.

Q Okay.

A I think Sergeant Smith was the one who actually signed for it, but I was with him –

Q Okay.

A – when he got it.

Q And where is Sergeant Smith now?

A He's deceased.

Q Okay. And you had indicated earlier that sometime later that afternoon Bobby Holmes went with you to Divine Savior and gave a blood sample also, is that correct?

A That's correct.

Q And, again, you saw that take place?

A Yes, sir.

Q Again, when it was given to you, it was sealed for delivery to SLED also?

A Yes, sir.

* * *

[Officer William C. Mobley –
Cross By Mr. Nettles]

[2559] A I looked to see what was inside. I never did take them directly out of the bag.

Q That's right. But you opened it up, you moved one to one side so you could see what was in there?

A Yes, sir.

Q You weren't wearing gloves when you did that?

A I don't recall whether I was or not.

* * *

[2561] Q Did you maintain custody of the gloves in a separate bag, once you took them off?

A No, sir.

Q Have you ever done that?

A No, sir.

Q So then we have got no evidence of whether you were wearing gloves or not?

A No, sir.

Q Okay. Now, as a matter of fact, you don't even remember whether you were wearing gloves or not?

A That's correct.

Q Now, several of these items have a number of – several of these bags contain a number of different items. And on the outside of the bag – we have the bag here. It's not listed what's in the bag, is it?

[2562] A No, sir.

Q So someone had to look through the bag to determine what was in the bag?

A I'm the one who kind of looked through the bag to see what I could determine that was in the bag.

Q That's all I'm getting at. And you had to do that in order to make this list?

A That's correct.

Q Because this wasn't a running list that the person who gathered the information didn't put it on there. You gathered all this information. And when you were going to make this documentation a condition of the evidence, you had to go through the bags to figure out what all was in there?

A I did a visual look into the bag and made that list on my observation.

Q Okay. You did not change gloves. Well, first of all, you didn't wash your hands between checking one bag and the next, did you?

A No.

Q You didn't – and so you don't remember whether you were wearing gloves or not. But if you were wearing gloves, you are telling us you wouldn't have changed your gloves anyway?

A No.

[2563] Q No, or you would have changed your gloves?

A No.

Q You would not have changed gloves?

A No.

Q You would not changed gloves. Would you have changed your gloves between bags?

A I don't think I even – the inventory wasn't even made there at the apartment. The bags and things were brought back to the police department where the inventory was made.

Q Okay. Where in the police department was the inventory made?

A In my office.

Q Okay. Where in your office was the inventory made?

A On my desk.

Q The inventory was made in your office. You took all the bags and you made this inventory and filled this out?

A That's correct.

* * *

[2614] Q Did you look for prints on any of the money that was found on Bobby?

A No, sir.

Q Ms. Stewart – I mean, if that was her money, there certainly a chance there would have been fingerprints on it, right?

A I can't comment. I don't know.

* * *

[2618] Q Now, what was the condition in this – in this evidence here now – this here we have – this was found by you at some point and this was brown bag containing two paper towels what appears to have blood on them.

A Yes, sir.

Q Correct.

Now, if this document is dated 1-9 of 1990?

A Yes, sir. That's when it was transported to SLED.

Q That's when it was transported to SLED. When was it found?

A The day of the incident.

Q Why did this evidence not go to SLED with the rest of the evidence?

A It was overlooked. It was not transported the day – when I discovered it hadn't been sent, we took it at a later date.

Q Okay. So where did this evidence stay for [2619] eight days?

A In the evidence room.

* * *

Q Okay. But this – it appears to have blood on them, so you documented presence of blood on those papers towels?

A Yes, sir.

Q Okay. Now, let's look at – this is the documentation of evidence that you did, correct?

A Yes, sir.

Q And this is brown bag containing one blue/black robe?

A Yes, sir.

Q One pink nightgown. One pair of flowered shoes?

A Yes, sir.

Q Brown bag No. 2, containing bedding from victim's bed, white sheets and flowered sheet, correct?

A That's correct.

Q 3. Bag 3 containing pink robe, one pink nightgown, white, victim wearing at the time of assault, correct?

[2620] A That's correct.

Q There is – now – and then down here once again we have got the towel with the blood on it, correct?

A Yes, sir.

Q There is no documentation of any of the presence of any blood at the time it was sent to SLED, is there?

A On those items?

Q Yes.

A I didn't pull the items out to check. I didn't see.

Q I understand. But this is the best documentation we have got of the evidence at the time it was gathered?

A Yes, sir.

Q Okay. And the best documentation that we have got of the evidence at the time that it was gathered does not mention any blood on either of the nightgowns, correct?

A I think if you will look on the exam requested, on the documentation, we asked for sample to be examined for blood.

Q Okay. And but you certainly you – you documented it in No. 9, didn't you?

[2621] A Yes, sir.

Q Okay. Back here – and this represents the best documentation we have of the condition at the time this evidence was gathered as well, and we don't have any documentation of – at the time the evidence was gathered of any blood on a white shorts that belonged to Bobby Lee?

A No, sir.

Q We don't have any documentation of any blood on any sweat jacket by Bobby Lee?

A I didn't notice any.

Q Okay. As a matter of fact, right here we have got white plastic bag containing blue/white striped shirt, right?

A That's correct.

Q That's the blue/white striped shirt that you gathered out of his room, correct?

A That's correct.

Q There is no documentation of any blood on the blue/white striped shirt that you say was gathered – that you say had blood on it when you gathered it out of his room, is there?

A I didn't document that, no.

Q Excuse me?

A I didn't document it, no.

* * *